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A VIEW
OF THE
CONSTITUTION
OF THE
CHURCH OF SCOTLAND.



A
VIEW
OF THE
CONSTITUTION
OF THE
CHURCH OF SCOTLAND.

BY THE LATE
GEORGE HILL, D.D.
PRINCIPAL OF ST. MARY'S COLLEGE, ST. ANDREWS.

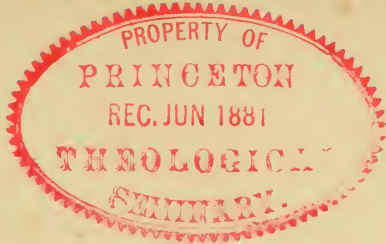
THIRD EDITION,
WITH THE ORIGINAL APPENDIX ; AND NOTES,
BY ALEXANDER HILL, D.D.
MINISTER OF DAILLY.

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ADVERTISEMENT.

To the third edition of a View of the Constitution of the Church of Scotland, some Notes are subjoined, which various changes that have taken place seemed to render necessary, or in which I have ventured to express an opinion on one or two points connected with the administration of ecclesiastical affairs. With the work itself, as it is one which is often appealed to as an authority, I have not presumed to interfere. The only change upon it, which it would not be absolutely trifling to notice, is the omission of a note in page 119 of the second edition, in which the author mentions his having borrowed several of his expressions from a small publication by the late Dr. Finlayson.

ALEX. HILL.

*Manse of Dailly,
Dec. 23, 1834.*



PREFACE.

I PUBLISHED, in 1803, under the name of "Theological Institutes," a work consisting of three parts. The first part was the outline of a course of Lectures prepared for the purpose of introducing those who hear them to an acquaintance with the science of theology. The second part was a delineation of the constitution of the Church of Scotland, meant to furnish young men with some preparation for the discharge of those official duties to which that constitution may call them. The third part contained counsels addressed to students of divinity, respecting those functions by which a minister of the Church of Scotland is distinguished from other office-bearers of that church.

Some of my brethren have suggested to me, that it is expedient to publish the

second part separately, as affording those who may take little interest in the first or third parts, a more distinct view of the ecclesiastical establishment of Scotland, than is to be found in any other treatise; and from deference to that suggestion, I now present to the public a portion of a former work.

I have not found it necessary to make any material corrections upon the first edition. In the fourth section, I have given a more minute detail of the manner in which business is introduced into the General Assembly; in the seventh section I have enlarged the account of the augmentations of stipends, and of the widows' fund; and to the Appendix I have added copies or abstracts of some recent Acts of Parliament, very interesting to the ministers of the Church of Scotland, and also a note containing the substance of what I stated in the third part of the Theological Institutes, respecting the Maintenance of the Poor in Scotland.

Even with these additions, I am sensible, that the view here given of the provision made by the state for the Church of Scotland, will appear to many of my readers imperfect. But if they wish to follow the train of decisions upon the controverted

points of the subject, I have the satisfaction of referring them to Mr. Connell's Treatise on the Law of Scotland respecting Tithes, a work in which the learned Procurator for the Church, with a kindly attention becoming his office, has furnished the ministers of the Church of Scotland with particular and authentic information.

I do not expect that all the reasonings and opinions, which occur in this delineation of the constitution of the Church of Scotland, will coincide with the sentiments of every person who has canvassed the subject. But of the statements of facts which it contains, I offer this general voucher, that I write upon a subject intimately connected with my profession, and with the leading pursuits of my life ; and that my brethren, who can easily resort to the authentic sources of information, would deem me unworthy of their society, if I were capable of introducing wilful misrepresentations into a didactic treatise.

*St. Mary's College, St. Andrews, }
September 22, 1817. }*





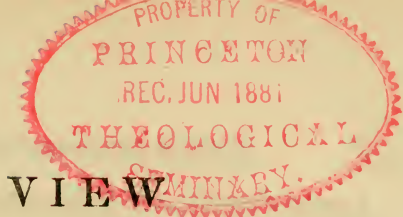
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OF THE
CONSTITUTION
OF THE
CHURCH OF SCOTLAND.

SECT. I.

ON THE CONNEXION BETWEEN THE CHURCH AND
THE STATE.

THE sentiment of religion, which distinguishes man from the other inhabitants of the earth, has a powerful influence upon his character and his condition. It extends the sphere of his enjoyments; it gives refinement and elevation to his affections, his pursuits, and his hopes; and it administers the most soothing and permanent consolation under the afflictions of life. An acknowledgment of the existence and providence of superior beings, overawes those headstrong passions which know no other control: it unites rulers and people in subjection to a common sovereign: and, enforcing the performance of their reciprocal duties, it co-operates with human laws in preserving the peace and order of the community. From thence too is derived the solemnity of an oath, that appeal to an invisible witness, the Almighty Avenger of wrong, which stamps upon engagements, promises, and declarations

a sacred character, which the most hardened wickedness seldom dares to despise.

In every civilized country there has been a general impression of the utility of those principles of natural religion, which, if they were rightly understood, and universally believed, would form the cement of civil society ; and under this impression, what to every man is the most important personal concern, became also the care of the state. The wisest heathen philosophers said, that the foundation of laws ought to be laid in a belief of the being and providence of the gods. Ancient legislators sought to derive from heaven the most venerable sanction to their laws ; and the rulers of states, regarding the care of what concerned the gods as one of the first objects of legislation and government, took under their protection the temples, the auguries, the sacrifices, and the oracles.

As all speculations concerning the being, the providence, and the moral government of God, which are conducted by the unassisted powers of reason, necessarily abound with error, those great principles could not enjoy the public national support which the states of antiquity wished to give them, without being blended with the absurdities, the superstition, and immorality of the established systems. But in one small district, divine revelation, separating the truth from every approach to falsehood, incorporated with the ceremonial and judicial law of a chosen people, just notions of the Supreme Being : and the great plan of divine providence in selecting the children of Israel, embraced a future period, when the faith of Christ should impart the same advantages in much larger measure to all the nations of the earth. The peculiar doctrines by which “ the gospel of Christ is the

power of God unto salvation to every one that believeth," involve a complete revelation of the great principles of natural religion, which are essential to civil government; and the institutions of the gospel disseminate those principles in a manner which more effectually preserves them from adulteration, and is infinitely better fitted to reach the understanding and the heart, than any mode of instruction, or any form of worship, which the world had formerly possessed. For some ages, indeed, the rulers of states lent their aid to the bigotry of those who, from attachment to the established religions, were the avowed enemies of the new system. But the same prophets who announced its appearance, had declared, that it was not always to continue an object of persecution. As the Jewish princes are praised in the Old Testament for their care of the law and of the worship of God, so David, looking forward to the reign of his illustrious descendant, says of the Messiah, "The kings of Tarshish and of the isles shall bring presents; the kings of Sheba and Seba shall offer gifts; yea, all kings shall fall down before him:"* And the evangelical prophet Isaiah introduces the Lord God thus speaking to the church which he was to gather from the heathen. "Behold, I will lift up mine hand to the Gentiles, and set up my standard to the people; and kings shall be thy nursing fathers, and their queens thy nursing mothers; they shall bow down to thee with their face toward the earth."† When Constantine, therefore, adopted the faith of Christ as the national religion, and when his successors in the Roman empire, and in the different kingdoms into which the

* Psalm lxxii, 10, 11.

† Isaiah, xlix. 22, 23.

empire was divided, strengthened by various regulations the connexion which he had established between the Christian church and the state, they were the instruments of fulfilling one part of the ancient prophecies respecting the propagation of Christianity, by affording the church of Christ a protection and support similar to that which the law of Moses enjoyed under every king who walked in the ways of his father David.

A connexion between the church and the state, notwithstanding these authorities and recommendations, has been severely reprobated. While the enemies of religion have studied to divert the public attention from the offensive and mischievous nature of their principles, by disguising their hostility to religious establishments, under pretensions to liberality of sentiment and enlarged toleration, many who profess an earnest zeal for the stability and success of the gospel, have asserted, that it stands in no need of forming any connexion with the state, and that its purity is always contaminated by so unnatural an alliance. The reasons of this assertion may often be traced in the private resentments or the political situation of those from whom it proceeds : The assertion is dictated to some by that spirit of innovation which is weary of the present institutions of society, without having any distinct apprehension of what is to be substituted in their place ; and with others, it is merely the rash expression of an opinion which has been formed without due attention to the violence of the human passions and the course of human affairs. We may often observe an indifference about religion, which, fostered by the multiplicity of the business and amusements of life, proceeds to open profanity ; a turbulence, which

derives pleasure from interrupting, upon every capricious impulse, the serious occupations of others; a rashness of speculation and love of singularity, which delight in attacking truths the clearest, the most important, and the most generally received; and a depravity of heart and obstinacy in wickedness, which regard with contempt and aversion an authoritative system of pure morality. Now, if we combine all these circumstances, and allow to each its due weight, we shall not feel ourselves entitled to presume, that the pious zeal of the friends of Christianity will, in every age, be sufficient to defeat the designs of its enemies: But, while we rely with entire security upon the promise of him who said, that “the gates of hell shall not prevail against his church,” we shall thankfully acknowledge his wisdom in employing, as an instrument of fulfilling his promise, this salutary appointment, that civil society, in return for the support which it derives from the pure principles of religion inculcated by the gospel, shall concur with Christian zeal in repelling every outrage. Ecclesiastical power, feeble and unarmed when opposed to the violence of man, is aided by the authority of human government. The blasphemy and open impiety, which shock the feelings of good men, which corrupt the young, and unsettle the minds of the multitude, are restrained by those punishments which the civil magistrate can inflict. The day upon which Christians have, from the beginning, assembled for public worship, is guarded by law from profanation; worshippers are secured against any rude interruption; the ministers of religion are protected in the celebration of the ordinances of the gospel; and the regular ministrations of an order of men recognised by the civil constitution, furnish a

continual exhibition of the doctrines and the duties of true religion. Christianity becomes a part of the law of the land, which no man is permitted to revile, or openly to attack : The profession of it is an inheritance which we receive, together with our civil liberties, from our fathers ; and the succeeding age has the same security for the transmission of this as of any other part of their inheritance.

If all who agreed in receiving the faith of Christ, had also agreed in the interpretation of Scripture, the connexion between religion and the state would involve no other principles than those which have now been explained. But as, even in the days of the Apostles, opinions were propagated of which they express high disapprobation, so, in succeeding ages, there have been controversies respecting the fundamental doctrines of Christianity ; there have been contradictory systems with regard to the form and polity of the Christian society ; and some Christians have understood so little of the spirit of the Gospel, as to propagate opinions subversive of all government, whilst others submitted to a foreign dominion, whose pretensions often interfered with the regulations of that civil government to which their allegiance was due. These different tenets and practices of Christians produced separate communities, sects, or divisions, who, generally annexing more importance to the points upon which they differed than to those upon which they agreed, regarded one another with mutual jealousy and dread, as corrupters of the true faith. It was impossible for the magistrate, understanding by that word the supreme civil power in the state, to avoid making a distinction amongst those separate communities. In every independent state, where the

voice of the people was not overpowered by an iron despotism, or counteracted by circumstances of a very peculiar nature, the religious community to which the majority belonged put in an irresistible claim for the public favour ; and the magistrate, not finding himself at liberty to extend the same civil advantages to Christians of all denominations, was guided and limited in his choice by existing circumstances, and by the train of events. As the number of Christians in the Roman empire probably had no small influence in determining Constantine to renounce the religion of his fathers ; so it was the state of the public mind, with regard to the controverted points, which generally directed his successors in giving their support to one of the contending parties : It was the indignation excited amongst all ranks by the corruptions of the church of Rome, which emboldened the rulers of protestant countries to throw off the yoke ; and it was the impression made upon the inhabitants of those countries by the tenets of particular teachers, or by collateral circumstances, that gave to the connexions then formed between the church and the state, those different shades of Calvinism and Lutheranism, of Episcopacy and Presbytery, by which they are still distinguished. The magistrate followed the voice of the people ; in other words, the connexion which any particular state formed with religion, was agreeable to the will of the state. It was a connexion with that system of opinions, and that form of church polity, which were there accounted most conformable to the spirit of Christianity, best adapted to circumstances, and likely to communicate in the most effectual manner those advantages which religion is fitted to impart to society.

Such being the history of the connexion between the church and the state, the discussions to which this subject has given occasion naturally arrange themselves under the two separate heads, of religious establishment, and religious toleration ; the first comprehending what respects the connexion between the state and that form of Christianity which it has adopted ; the second, what respects its treatment of other forms.

I. A connexion between the church and the state, produces a religious establishment.

Soon after the Roman emperor declared himself a Christian, he said to an assembly of the ministers of the church, “ *You are appointed by God overseers of those things which are within the church, and I of those which are without.” In these few words Constantine expressed with considerable accuracy the leading principle upon which every religious establishment ought to proceed. Those things that are within the church, preaching the word, the administration of the sacraments, the exercise of ecclesiastical discipline, and all the other offices which minister to the spiritual improvement of Christians, are committed to those persons who, according to the appointment of the Lord Jesus, are to continue till the end of the world the successors of his apostles, and concerning whose qualifications and duties particular directions are given in his word : those things that are without the church

* *Υμεις μεν των εσω της εκκλησιας, εγω δε των εκτος υπο Θεου καθεσταμενος επισκοπος.* Eusebius de Vita Constantini, lib. 4. c. 24.

are left to the care of the civil magistrate, who affords the ministers of Christ, in the performance of their offices, that protection and countenance by which they may be rendered more respectable in the eyes of the people, and more effectual instruments of general edification.

In the application of this obvious principle, much controversy has arisen concerning the limits of civil and ecclesiastical power. There were times, when the ministers of the Christian religion almost in every country, forgetting that the power committed to them by the Head of the church is purely spiritual, usurped an authority inconsistent with the rights of sovereigns, and with the order of society. At the Reformation, when some of the powers which had been exercised by the pope were dissolved, and some were transferred to other hands, it became a matter of much discussion and of difficult settlement, who should succeed to the branches of ecclesiastical authority which Protestants judged it proper to retain; and there is not a perfect uniformity as to the manner of distributing those branches between the church and the state. With respect to all points of mere order, it must appear to every enlightened mind a matter of indifference, whether the enactments are made by a civil or an ecclesiastical power. With respect to other points concerning which the church would have exercised her inherent powers had she been unconnected with the state, she may choose to submit to the regulations of the civil magistrate, from a conviction that the end for which those powers were given her is most effectually attained by this submission. So long as the ministers of religion are not disturbed or enslaved in performing, according to the directions of

scripture, those parts of their office which promote the edification of Christians, it would be very unwise to revive the undefinable questions which formerly agitated the public mind. They are required, by the genius and the precepts of the gospel, to exercise an accommodating spirit in every case where it does not interfere with sacred obligations ; and they forget the duty of Christians and of good subjects, if, for the sake of an uncertain imaginary good, they introduce those substantial evils which must arise from every attempt to unsettle the foundations of a religious establishment.

There are two general points respecting the authority of the state in matters of religion, which are implied in the idea of a religious establishment.

First, the civil magistrate is entitled to know the opinions of the community of Christians to whom he imparts the benefits of an establishment. He adopted that community in preference to others, from the knowledge which he then had of their tenets ; and if they were to embrace opinions essentially different, he might see cause to withdraw that preference. Hence, confessions of faith, which, ecclesiastically considered, are an exposition of the truth prepared by the society of teachers to direct their own ministrations, and to warn the people against error, become a declaration to the state of the opinions and principles held by the ministers of the established religion ; and subscription to confessions or articles of religion, is a solemn pledge to the civil magistrate, that they will not, without his knowledge, make any change upon that system of doctrine which had received his sanction. Accordingly, divers acts of parliament enjoin, that every person who administers the word and sacraments in the

church of England, shall openly subscribe the thirty-nine articles. And at the Revolution, the same acts of parliament which settled Presbyterian church government in Scotland, ordain, "That no person be admitted or continued hereafter to be a minister or preacher within this church, unless that he subscribe the Confession of Faith, declaring the same to be the confession of his faith."

Secondly, the civil magistrate is entitled to take care that the established church does her duty, and that none of her regulations and acts disturb the public peace. The form of the religious establishment generally provides some mode of exercising this superintending power. In one of the thirty-nine articles of the church of England, it is declared, that the synods and councils, where those regulations and orders which may affect the public tranquillity are enacted, shall not be gathered together without the commandment of princes: and the Church of Scotland, in her Confession of Faith, declares what, in effect, comes to the same thing, that the civil magistrate has power to call synods, to be present at them, and to provide, that whatsoever is transacted in them be according to the mind of God. It will always be the wish of every person who understands the true interests of the community, to avoid even the appearance of a collision between the powers of the church and the state. But if the church derive essential benefit from the state, it is agreeable to common sense and common equity, that there should be some mode in which that supreme power, which is the guardian of the whole community, may be exerted, as circumstances shall require, in order to prevent the church, which is a part of the community, from neglecting those duties, for the

sake of which she enjoys protection and favour, or from exercising her rights in a manner which appears hurtful to the state.

Scotland and England having been separate kingdoms at the time of the Reformation, a difference of circumstances in the two countries led to different religious establishments; and when they were incorporated into one kingdom by the treaty of union, the same regard to the inclinations of the people of Scotland, to which Presbytery owed its first legal establishment in this country, produced a declaration, to which both kingdoms gave their assent in the most solemn manner, that Episcopacy shall continue in England, and that the Presbyterian Church-government shall be the only government of Christ's church in that part of Great Britain called Scotland. With some variety in the manner of connexion between the church and the state, and with considerable difference as to the measure of public favour, both churches enjoy the essential benefits of an establishment; that is, both are incorporated with the state, so as to make a part of the constitution. In Scotland, the Confession of Faith is ratified by act of Parliament, which, without adding any confirmation to the truth of the doctrines therein contained, gives security for the continued profession of them. Those meetings of the office-bearers of the church which Presbyterian government implies, are recognised by law; and the sentences which they have a right to pronounce, are supported and enforced by civil authority. The ministrations of the established teachers of religion in the places provided for public worship, are not only protected from insult, but commended to the respect of the people. The teachers are maintained by the state;

and the emoluments annexed to their office, being a freehold which they enjoy under the protection of law, cannot be withheld by the caprice of the multitude, or the oppression of the great. When they who preach the gospel depend for their subsistence upon the good will of those to whom they minister, they are laid under a strong temptation to flatter the prejudices or inflame the passions of the people ; and if the firmness of an enlightened virtuous mind enable them to withstand the temptation, they and their families may be reduced to severe distress : Whereas the fixed provision for the clergy of the established church, while it delivers them from the humiliating condition which embitters the lives and impairs the usefulness of many dissenting ministers in England and Scotland, may be regarded as a national blessing ; because, by rendering them completely independent of the opinions and maxims of the world, it leaves them at perfect liberty, in fulfilment of the sacred obligations derived from the authority and example of the Shepherd and Bishop of souls, to declare the truth as it is in Jesus, and to oppose their influence to prevailing vices.

II. A connexion between the church and the state may be accompanied with religious toleration.

Toleration was a word for many ages unknown in ecclesiastical history. The church very early availed herself of that accession of strength which she derived from an alliance with the civil power, in persecuting those who refused to adopt the opinions which she declared, or to conform to the ceremonies which she ordained ; and while her censures consigned to eternal punishment all who were guilty of what she called

heresy or schism, she delivered them to the secular arm, that they might suffer in this world those evils which the magistrate can inflict. Hence arose the bloody contests amongst the different sects of Christians in the Roman empire, conducted more after the most savage manner of war, than with the weapons which become theological disputants. Hence arose the horrid court of inquisition, which the influence of the church of Rome established in many of the kingdoms of Europe, by whose iniquitous judgments, those who differed, or were suspected to differ, from the tenets of the church, lost their estates, were confined in dungeons, were subjected to every kind of torture which the ingenuity of malice could devise, and were sometimes consumed in the flames with the solemnity of a sacrifice. Hence too arose, after the Reformation, those hardships to which many worthy men were exposed, during the reigns of Elisabeth, James, Charles I. and Charles II. for not conforming to the ceremonies retained by the Church of England. The acts of uniformity, both in England and in Scotland, proceeding upon this principle, that “it conduces to the peace of the nation, and to the honour and propagation of religion, that there should be an universal agreement in the public worship of God,” required all ministers to use the common Prayer Book, declared places of worship where it was not used to be unlawful meetings, and subjected all who attended them to severe penalties. This persecuting spirit was not peculiar to any description of Christians in those days. The Presbyterians had complained loudly of what they suffered before the civil war. But when the troubles of the times conducted them to supreme power, they adopted the principle of uniformity in its full extent ;

they spoke of toleration as a deadly sin ; and they conceived that civil power could not be exercised in a manner more acceptable to God, than in enabling them to accomplish the purpose of the Solemn League and Covenant, by extirpating popery and prelacy. The friends of Episcopacy complained in their turn ; but they were not reformed by their sufferings. For as soon as the restoration of Charles II. put the sword in their hands, they began to employ it against the Presbyterians ; and one great business of the Parliaments of Charles II. in England, and of his Privy Council in Scotland, was to support the Established Church, by compelling attendance upon her worship, and by punishing all who, upon any pretext, resorted to what were then called conventicles.

The blessed change which the glorious Revolution produced upon the character of our government, extended its influence to the connexion between the church and the state. That indulgence to the consciences of others which had been avowed by the Independents as their principle, but which every other sect had reprobated, was adopted by the legislature at the Revolution ; and the prejudices of the people have gradually yielded to the steady operation of law, and the progress of science. In Scotland, while Presbyterian government was established, as being agreeable to the inclinations of the great body of the people, those of the Episcopal communion were protected by law against any molestation from the zealous Presbyterians ; and the disabilities which they formerly incurred by worshipping God according to their consciences, are now completely removed. In England, although it is a part of the religious establishment, confirmed by the treaty of union, that the most important civil offices in that country are open only to

those who give legal evidence of their being members of the Established Church ; yet Protestant Dissenters are exempted by the Toleration Act from all penalties, civil or ecclesiastical, for their non-conformity to the Church of England ; and instead of that subscription to the doctrinal articles of the Church of England, which that act prescribed to Dissenting ministers, they are now only required to declare, that they receive the Scriptures as the rule of their doctrine and practice. The benefit of the Toleration Act was withheld from Papists, not because their theological tenets were conceived to be false, but because their subjection to a foreign power rendered them dangerous to the state. But the Catholics of Great Britain having of late years disclaimed the name of Papists, or even of Roman Catholics, having solemnly disowned the power of the Pope, and having professed that allegiance to the civil government which is inconsistent with the principles of Papists, are now delivered from many of the disabilities to which they were formerly subject. Blasphemy, an open denial of the Trinity, and reviling the Christian faith, are crimes punished by the magistrate, as hurtful to the essential interests of society ; and he is ready to chastise any such attack upon the established religion as tends to disturb the public peace. But the religious opinions of those who live inoffensively are not inquired after. The law, both in England and Scotland, takes under its protection all places where Dissenters of any description assemble for worship ; and Christians are understood to be accountable for their interpretation of Scripture, and their mode of worship, only to him who is the Lord of conscience.*

* Note A.

Such is the liberal system under which we have the happiness to live. By this conjunction of a religious establishment and an entire toleration, the state enjoys the salutary influence of the faith of Christ, without subjecting individuals to any hardship. The pillar of truth is erected in the established church: but those who entertain doubts concerning the truth of what is inscribed upon that pillar, may resort to the teachers of another society, where they think they will find doctrines more agreeable to Scripture. A certain mode of worship is statedly observed in the established church: but those to whom there appears a superfluity, a deficiency, or any exceptionable circumstance in the regulations and ceremonies which constitute that mode, are at liberty to join in communion with Christians whose worship they consider as more conformable to divine institution. A legal maintenance is provided for the ministers of the established church, which affords a security that the ordinances of religion shall be regularly administered, and the Gospel preached to the poor: but those who do not choose to avail themselves of this legal provision, are allowed to make their own terms with the teachers whose ministrations they attend.

Here is authority blended with liberty, in a manner most agreeable to the reasonable nature of man, and to the genius of the Christian religion. Civil government lends its aid to the church, yet does not impose its favours: the kings of the earth bow before Jesus, and do him homage; yet his kingdom still appears not to be of this world, and “the Lord’s free-men”* do not subject their consciences to any other master. The bitter animosity which has generally

* 1 Cor. vii. 22.

attended theological controversy, and which the exercise of a persecuting power necessarily fostered, is now happily mellowed by Christian charity, and the disciples of Christ have learned to differ, without hating or even despising one another. Although the members of the established church defend their rights, they do not consider the various sects who exist by the toleration as their enemies: they readily admit, that there may be much piety, and worth, and learning amongst those with whom they do not ordinarily communicate; and instead of holding, in the language of former times, that separation is of itself a deadly sin, they conceive it possible, that the ends for which Christians are commanded “not to forsake the assembling of themselves together,” may be attained by those who conscientiously withdraw from the established religion of their country.

It would ill become the ministers of the Church of Scotland to be behind the other members of that church in sentiments of candour and charity towards the Dissenters. Yet they must not forget, that it is the duty of their place never to give any countenance or encouragement to divisive courses. They repay to the state the advantages which they derive from the establishment, by explaining and enforcing those precepts of the Gospel which inculcate obedience to civil authority, and a spirit of peace and subordination. And while the ministry, which they have received from their Master in heaven, implies a sacred obligation to “give none offence to the church of God, to bear with the infirmities of the weak, and to please every one for his good to edification,” they are led, by the situation which they hold in society, to consider it as the object of their ambition, that the esta-

blished mode of teaching which the state hath provided shall never cease to be recommended to the attention and the good opinion of the people, by the learning, the virtues, the accomplishments, and the diligence of those to whom it is committed.

SECT. II.

ON THE GENERAL PRINCIPLES OF PRESBYTERIAN GOVERNMENT.

WHEN the Apostles received from Jesus a commission to make disciples of all nations, they were invested with certain extraordinary powers, which the extent of their commission required. It is admitted by all Protestants, that a great part of the apostolical powers ceased with the persons to whom they were committed; and it is the peculiar tenet of Presbyterians, that that right of exercising inspection and rule over Christian pastors, which was implied in the universal commission of the Apostles, and which, in their hands, was not liable to abuse, is one of those extraordinary powers which were not transmitted to their successors. Presbyterians hold, that preaching the word, dispensing the sacraments, and exercising ecclesiastical jurisdiction over Christians, are functions which, in all ages, belong to the office of a Christian teacher; that the right of performing every one of these ordinary functions was conveyed by the apostles to all whom they ordained;* that the persons who, in

* 1 Peter v. 1, 2, 3, 4.

the New Testament, are indiscriminately named presbyters and bishops,* had the right of conveying to others all the powers with which they had been invested; and that every person who is ordained is as much a successor of the apostles as any Christian teacher can be.

It will be admitted by every person acquainted with ecclesiastical history, that the form of government which is called Episcopal, has, from very early times, generally prevailed in the Christian church. For, although bishops and presbyters appear to be confounded in Scripture, and in the writings of the apostolical fathers, yet, in the second century, the name of bishops was appropriated to an order of men who possessed exclusively the right of ordination and jurisdiction, and who were the overseers of those whom they ordained. And from the second century to the time of the Reformation, this order of men continued to exist almost in all parts of the Christian world, and was regarded with respect and submission, both by the clergy and the laity. But the first reformers, who believed that the distinction between bishops and presbyters has no foundation in Scripture, and who wished to apply an effectual remedy to the abuses which appeared to them to have arisen, in the progress of human ambition, from the practice of investing bishops with powers superior to presbyters, did not consider the antiquity or universality of that practice as any reason for its being continued. Recurring to what they accounted the primitive Scripture model, they laid the foundation of Presbyterian church-govern-

* Πρεσβυτεροι, Επισκοποι, Acts xx. 17, 28; Titus i. 5, 7. See Campbell's Lectures on Church History

ment in this principle, that all ministers are equal in rank and power; and they did not admit any official preference but that which is constituted by voluntary agreement for the sake of order.

In Jerusalem, Ephesus, Corinth, and other principal cities which the apostles visited, they ordained a number of presbyters, either because they found that the Christians could not assemble conveniently in one place, or because they wished to provide for the future increase of believers. These presbyters, having the charge of the spiritual concerns of all the Christians in the city where they resided, and being ready to embrace every favourable opportunity of communicating the knowledge of the Gospel to the inhabitants of the adjoining regions, would naturally hold frequent meetings, that individuals might report their success, and that all might consult about the most prudent methods of promoting their common object. In those meetings it was necessary that some one should preside. If neither an apostle was present, nor any person invested by an apostle with the inspection of that city, one of the presbyters would be called to the office of president; and whether this office was considered as the right of the senior presbyter, or went by rotation, or was conferred by election, it would imply during its continuance a kind of superiority over the other members.

This early pattern Presbyterians profess to have followed in the construction of those meetings of the office-bearers of the church which are characteristic of their government. In some of the churches upon the Continent, where a number of presbyters have the charge of a city or district, there are superintendants, *praepositi*, or inspectors, who are appointed for life to

preside in the council of presbyters, but who, having no other superiority than that which is implied in the office of president, and no powers or privileges essentially different from those which belong to presbyters, are only accounted *primi inter pares*. In the greater part of Presbyterian churches, from a jealousy, lest, under the form of superintendency, some kind of prelacy might be introduced, the parity of ministers is guarded by the frequent election of a new president or moderator, who, when his term is expired, returns to an equality with his brethren. A body of presbyters, having a moderator, who conducts the proceedings, and executes the sentences, is considered as competent to perform all the acts which, in Episcopal government, belong exclusively to the bishop. It tries the qualifications of candidates for the office of the ministry : it confers orders by the imposition of hands : to those who are nominated by persons having right of nomination, it grants the investiture of the sacred office, or induction into the charge of a particular parish ; and it exercises inspection and jurisdiction over the pastors of all the parishes within its bounds.

In teaching, in dispensing the sacraments, in presiding over public worship, and in those private functions by which he ministers to the comfort, the instruction, and the improvement of the people committed to his care, a pastor acts within his own parish according to his discretion ; and for his discharge of all the duties of the pastoral office, he is accountable only to the presbytery from whom he received the charge of the parish. But in every thing which concerns what is called discipline, the exercise of that jurisdiction over the people with which the office-

bearers of the church are conceived to be invested, a Presbyterian minister is assisted by lay elders. They are laymen in this respect, that they have no right to teach, or to dispense the sacraments; and on this account they form an office in the Presbyterian church inferior in rank and power to that of pastors. They generally discharge the office which originally belonged to the deacons, of attending to the interests of the poor. But their peculiar business is expressed by the name ruling-elders; for in every question of jurisdiction within the parish, they are the spiritual court, of which the minister is officially moderator; and in the presbytery, of which the pastors of all the parishes within its bounds are officially members, lay elders sit as the representatives of the several sessions or consistories.

Although the three texts* commonly adduced to prove that, in the days of the apostles, there were ruling presbyters distinct from preaching presbyters, may seem, when taken by themselves, to afford but a slender or doubtful foundation for that opinion; yet, from an enlarged view of the history of the church it will appear, that Calvin proceeded upon the most respectable authority, when, in 1542, he admitted lay elders into church courts. Amongst the Jews there were several persons called rulers of the synagogue; one of whom, who had the name of the minister or angel of the church, presided in public worship, while the rest were joined with him in the government of the synagogue. We know that the first Christian congregations were, in respect of the mode of worship, formed upon the plan of the Jewish

* Rom. xii. 8. 1 Cor. xii. 28. 1 Tim. v. 17.

synagogues; and by a direction contained in one of the epistles of Paul, we are led to believe, that in respect of government also they followed the same pattern. “Dare any of you, having a matter against another, go to law before the unjust, and not before the saints? Is it so, that there is not a wise man amongst you? No, not one, that shall be able to judge between his brethren?”* An attention to the sentiments of the people in every exercise of pastoral authority, was dictated by the situation of the church, at a time when Christianity was persecuted by the ruling powers, and when the pastors depended for their subsistence and protection upon the good will of their hearers. Accordingly, the meaning and the propriety of the recommendation which the apostle gives to the Corinthians, are illustrated by many passages of early Christian writers; from which it appears, that the trial, the condemnation, and the absolution of delinquents, were transacted in presence of the people, *apud plebem universam, praesente et stantium plebe, stantibus laicis*, and that, in the primitive state of ecclesiastical discipline, there were sometimes respectable men deputed by the multitude of believers scattered over a large district, who concurred in the sentences pronounced by the synods.†

The admission of lay elders into church courts having the sanction of these early authorities, Calvin thought it expedient to revive this primitive practice, as an effectual method of preventing the return of inordinate power in a superior order of clergy. With some variation in name or in privileges, the office of lay elders is found in all the Presbyterian

* 1 Cor. vi. 1, 5.

† King on the Primitive Church, Part I. chap. vii. and viii.

churches upon the continent. Ever since the Reformation, which in this country was conducted upon the general principles of Calvinism, it has formed an essential part of the constitution of the Church of Scotland; and it has been productive of very important advantages. To the readiness with which the elders undertake the office of deacons, Scotland is indebted for the easy maintenance of her poor; for men who live amongst the people with a kind of inspection over them, are qualified to distribute the funds provided for the support of the poor, with a proper attention to their real necessities, and without waste. The presence of a respectable eldership in the parochial consistory has a tendency to vindicate the exercise of ecclesiastical discipline from the charge of partiality, and to render it an instrument of general edification, by procuring a ready submission to every sentence. The eldership may also correct that love of power, of which clergymen have often been accused. If we should at any time discover a desire to act as judges or dividers, and to employ, for the gratification of our own ambition, avarice or resentment, the spiritual powers with which we are invested for the good of others, a firm union of the lay members in the church courts would effectually defeat every scheme of ecclesiastical tyranny.

These advantages of an eldership depend, in a great measure, upon the character and condition of the persons by whom the office is held. The exercise of censorial power requires a prudence, a delicacy, and an acquaintance with the world, which are seldom found in the lowest orders: and if all the lay elders of the Church of Scotland were mean unlearned men, they would probably bring, from their ordinary habits

and views, the unwise, illiberal, and violent spirit, which has often exposed to contempt the decisions of ecclesiastical assemblies. But if a clergyman is able to prevail upon persons to take part in the office of the eldership, whose situation gives them some influence in particular districts of the parish, and who, with unblemished morals, possess sound sense and good temper, he will have the happiness of knowing, that no kind of church government is better calculated to conciliate the respect and good will of the people, to restrain their vices, and to minister to their improvement, than that in which a faithful and diligent pastor, who maintains the dignity and independence of his own office, is supported by the co-operation of a body of ruling elders in those matters which belong jointly to his office and theirs.

We learn from the 15th chapter of the book of Acts, that a question which had divided the church of Antioch was submitted to the decision of the apostles and elders met at Jerusalem, who having pronounced a solemn decree upon the subject, sent it to the churches to be preserved and obeyed. This early instance of the subordination of ecclesiastical courts is understood to give an apostolical sanction to the practice of appeal in the conduct of ecclesiastical business ; and Presbyterian government, proceeding upon the general principle, that “ in the multitude of counsellors there is safety,” gives those who conceive they are aggrieved by the sentence of a parochial consistory, the right of appeal to a superior court, commonly called the Presbytery, composed of the ministers of all the parishes within its bounds, and of lay representatives from the consistories. In small states, such as Geneva, the purposes of church-

government are fully attained by the parochial consistories and one consistory of presbyters ; for while the parochial consistories exhibit, in opposition to the spirit of fanaticism, a standing ministry, a gradation of powers, and a superiority in those who teach above those who only bear rule, the consistory of presbyters, in opposition to the spirit of Independency, maintains the subordination of single congregations to an ecclesiastical court. But when Presbyterian government is established in a country so extensive as Scotland, the facility with which it is desirable to conduct church-business, requires the erection of many separate Presbyteries ; and this multiplication of courts, by enlarging the scale of subordination, and extending the right of appeal, in the manner that will be explained in a following section, renders the form of government more perfect.

In stating the general principles of Presbyterian government, it is impossible for an inhabitant of Britain to overlook a question which agitated the minds of our forefathers, concerning what was called the divine right of Episcopacy and of Presbytery. Upon one side, it was contended, that bishops are, by the appointment of God, a distinct order from presbyters ; that Episcopacy, being of apostolical institution, ought never to be laid aside ; that ordination is not valid when conveyed by a college of presbyters without a bishop ; and that the sacraments administered by persons who have received this defective ordination do not fulfil the purposes for which they were instituted. On the other side, it was contended, that the Presbyterian form of government is delineated and prescribed in Scripture, as a rule to which all the members of the church of Christ are bound to

submit till the end of the world, and consequently that every other form is unlawful. A conviction of the divine right of Presbytery produced, during the commotions of the seventeenth century, the Solemn League and Covenant, which was subscribed by many of all ranks in England and Scotland, who swore, with their hands lifted up to the Most High God, that they would endeavour the extirpation of Prelacy. And when the Presbyterians attained supreme power, they fulfilled this oath by many unjust and violent deeds. A conviction of the divine right of Episcopacy, to which Charles I. was accounted a martyr, and which all who trode in the steps of Archbishop Laud zealously inculcated, was one cause of those persecutions which the Presbyterians endured during a great part of the seventeenth century, both before the civil war commenced, and after the Restoration. And now that the progress of science and good government has exploded the horrid practice of persecution for conscience' sake, the same principle is the foundation of that contemptuous language with regard to the Presbyterian church, which often proceeds from the zealous friends of Episcopal ordination, and which sometimes appears in the writings of able divines, men in other respects profound and enlightened.

While every Presbyterian is bound to resist an opinion which represents the ministers of this National Established Church as intruders into the sacred office, and which unchurches the people of this country who attend their ministrations, he is not obliged to recur to the opinion held by the Presbyterians of the seventeenth century, but may rest in a system more liberal than either opinion. This system pro-

ceeds upon the following principle, which was first explained by Hooker, in the third book of his Ecclesiastical Polity, and was afterwards demonstrated by the learned and profound Bishop Stillingfleet, in the treatise which he entitled *Irenicum*. Although church-government is of divine appointment, that is, although the powers which it implies were not created by the state, but are conveyed from the Lord Jesus through those whom he ordained ; yet the New Testament does not prescribe any one particular form of church-government in such a manner as to render another form unlawful. By comparing incidental passages in the history of the journeyings of the Apostle Paul, with the information which can be collected from his Epistles, we may form a conception of the plan of government which he established in some churches. But the book of Acts does not enable us to follow that Apostle through the whole of his progress ; and of what was done by the other apostles, who, in the execution of their universal commission, visited different quarters of the world, Scripture gives little information, and ancient writers speak very generally and uncertainly. Our knowledge upon this subject, therefore, only extends to a part of the practice of one apostle. But we draw a conclusion which the premises by no means warrant, when we infer, that what was done by one apostle in planting some churches, was done by all the apostles in planting all churches. The presumption is, that instead of following one uniform course, they would, in every city, accommodate their establishments for the edification of the Christian converts, and the future increase of believers, to the numbers whom they had added to the church, to the population of the city, and to the

qualifications for the different offices which those whom they found there appeared to possess ; and that they would leave many things to be settled as the future occasions of the church might require. From Paul's appointing Timothy and Titus evangelists, with inspection over the ministers of Ephesus and Crete, we may clearly infer, that such inspection, which, in the particular circumstances of those churches, was expedient, is not in itself sinful. But it appears to be held forth rather as an example of what may be done, than as a binding rule ; and it does not furnish any proof that every Christian church is incomplete without a similar appointment. The directions in the New Testament concerning the qualifications of ministers, and the right discharge of their office, are equally applicable to the Episcopal and the Presbyterian forms ; and the exhortations and rules concerning the establishment and conduct of church-government, are sufficient to correct the abuses to which all different forms are liable.

This liberty in regard to the forms of church-government, which seems to be warranted by all that we know of the practice of the apostles, is agreeable to the genius of Christianity, and is essential to its character as an universal religion. Moses might deliver to the one nation, of which he was appointed lawgiver, a code of ecclesiastical, as well as of political and judicial institutions. But the apostles, who were sent to gather converts out of all countries, could not adopt any form of ecclesiastical polity that was equally applicable to the infant churches which were then planted, and to the national churches which were afterwards to be established ; and any attempt to bind upon Christians a particular form of

church-government, must have proved an obstacle to the propagation of Christianity amongst all the nations who found that plan incompatible with their civil constitution. The gospel, therefore, preserves upon this subject the same just and delicate attention to the nature of a reasonable being, and the varying circumstances of the human race, which pervades the whole system. Instead of creating, by the divine institution of any form of church-government, a pretext for sedition or disaffection to civil rulers, it inspires such sentiments, and delivers such general precepts, as may, in all different situations, furnish the most perfect directory for the government of the church ; and it leaves every nation which embraces the gospel, to proceed under the influence of the true spirit of that religion, in accommodating their form of church-government to their political constitution ; so that the two, moulded together by human wisdom, may conspire in preserving the public tranquillity, and promoting the spiritual and temporal good of those who live under them.

By the Revolution settlement, Presbyterian government was established in Scotland, not as being of divine right, but as being agreeable to the inclinations of the great body of the people of this country ; and by far, I trust, the largest proportion of the members of the Church of Scotland hold the liberal sentiments upon which the words of this settlement proceed. We do not contend, that there is an inseparable connexion between popery, the grossest abuse of church-government, and that superiority of a bishop above presbyters, called prelacy, which, although not prescribed in the word of God, may be adopted for the sake of conveniency : We do not

consider it as any part of our duty to Christ, the Head of the Church, to endeavour the extirpation of prelacy : We do not think ourselves called upon to exaggerate the defects which we observe in the English episcopacy, or to depreciate the advantages which may be derived from it ; and we are sensible, that, in a country such as England, a change from episcopacy to presbytery may be highly inexpedient. But although, with these views of the subject, we feel no disposition to take the Solemn League and Covenant ; yet, at the same time, we stand firm in that opinion which every minister of the Church of Scotland declares at his ordination, that the Presbyterian government and discipline of this church are not only lawful, but founded in the word of God, and conformable to the model exhibited in the primitive times of Christianity. We contend, that we are successors of the apostles, invested with all the powers which, of right, belong to any ministers of the church of Christ. We put a very high value upon the independence which Presbyterian ministers enjoy, by not being placed under the inspection of any one of their brethren. We study, by our general conduct, and our attainments in literature, to maintain the honour of that dignified station which we hold ; and we shall always be ready to defend by argument, the only weapon which we desire, or which, in such a cause, we think it lawful to employ, that form of church-government which was established in Scotland at the Revolution, and which the treaty of Union hath declared to be the unalterable government of Christ's church in this part of the United Kingdom.

SECTION III.

ON THE MANNER IN WHICH MINISTERS ARE ADMITTED INTO THE CHURCH OF SCOTLAND.

IN the Church of England, persons presented to a benefice are tried, ordained, admitted, and inducted by authority of the bishop: in the Church of Scotland, this office of a superior order of clergy devolves upon a college of equals, acting by their moderator. But by whomsoever the office is performed, the idea of an established church implies, that, in the admission of its ministers, the laws of the state concur with ecclesiastical authority.

The information that belongs to this important branch of the constitution of the Church of Scotland, may be arranged under four heads,—the trial of the qualifications,—the presentation of the patron,—the voice given to the people,—and the solemn deed of the Presbytery.

1. The laws of the state require those who enter into the Established Church, to take the oaths of allegiance, in testimony of their attachment to the civil government. But they leave the church in virtue of the powers derived from its Divine Founder, and agreeably to the directions delivered by his apostles, to try, examine, and finally decern with regard to doctrine, literature, and moral character; and upon any question respecting those points, they do not admit the possibility of appealing from an ecclesiastical to a civil court. Accordingly the church, in her standing laws, prescribes the previous education of intrants to the ministry, the

amount of the testimonials which they must bring from the Professors under whose inspection their education was conducted, the nature of the exercises which they have to perform for the satisfaction of those by whom they are tried, and all the other prerequisites, in order to their obtaining what we call a licence to preach the gospel. When a student has gone through a full course of philosophy in some university, and has, after finishing that course, continued to prosecute the study of divinity for the time prescribed, he may be proposed to a presbytery, in order to be taken upon trials. But the church, with a becoming jealousy of her most sacred right, does not permit presbyteries to take any student upon trials without the consent of a superior court, known in Scotland by the name of the synod; by which means, if a report unfavourable to the character of the candidate has arisen in any of the presbyteries of which the synod is composed, his trials cannot proceed till the matter be inquired into. If presbyteries are guilty of oppression in trying those whom the synod allows them to take upon trials, redress may be obtained by an appeal to their ecclesiastical superiors: but as there is more reason to apprehend that presbyteries will discover too much facility in the trial of young men than too much severity, they are wisely invested with powers ample, and, in some respects, discretionary, lest the apprehension of being wantonly brought into embarrassment and trouble for acting according to their conscience, might prove an additional temptation to remissness in the discharge of an important duty.

As the Church of Scotland does not sustain a licence granted by the dissenting classes in England,

or by any community of Christians in foreign countries,* all those whom she considers as licentiates are persons of whose character, literature, and abilities some presbytery had the fullest opportunities of judging; and who, at the time of their being licensed, testified their attachment to the doctrine, worship, discipline, and government of this church, by subscribing the subjoined formula.† They are under

* Act 9th, General Assembly 1779. "The General Assembly, upon the report of their committee for overtures, finding that a considerable majority of the presbyteries of this church have now agreed to an overture anent persons going to be licensed and ordained without the bounds of this church, did thereupon agree, without a vote, to turn the said overture into a standing act; and accordingly the General Assembly did, and hereby do, enact and prohibit all persons educated or residing within the bounds of this church, from going out of its bounds to obtain licenses to preach; and prohibit all preachers, licensed by this church, from going without its bounds to obtain ordination, unless they are called to a particular congregation in another country: and enact, that licenses obtained in that manner shall not be received, or have any effect in this church; and such preachers as contravene this act, shall forfeit the license formerly given them, and be no longer entitled to the privileges which belong to a preacher of the gospel in this church."

† By Act 10th, Assembly 1711, the licensing, ordaining, and admitting any who shall not subscribe, before they be licensed, ordained, or admitted respectively, the formula here subjoined, is prohibited and discharged. "I do hereby declare, that I do sincerely own and believe the whole doctrine contained in the Confession of Faith, approven by the General Assemblies of this national church, and ratified by law in the year 1690, and frequently confirmed by divers Acts of Parliament since that time, to be the truths of God; and I do own the same as the confession of my faith. As likewise I do own the purity of worship presently authorised and practised in this church; and also the Presbyterian government and discipline, now so happily established therein; which doctrine, worship, and church-government, I am persuaded, are founded upon the word of God, and agreeable thereto. And I promise, that, through the grace of

the inspection, and, in some respects, subject to the orders of the presbytery within which they reside ; and the nature of their situation is properly expressed by the ecclesiastical name probationers ; a name which reminds them that the course of their studies, as well as their general conduct, should be directed with a view to their future establishment, and that, during the time of their probation for the ministry, although they have no right to dispense the sacraments, they may improve their talents for composition and elocution, by preaching occasionally, as they are called.

In the Church of England, neither priest's nor deacon's orders are conferred without a title ; that is, without a connexion with some place where the sacred office is to be exercised, and from whence the person who applies for orders may derive a maintenance. But it is impossible to demand the production of such a title from those who are proposed for trials in a church, which does not admit of a plurality of benefices having the cure of souls, which requires every minister to reside in his parish, and presumes that he is to do the duty himself. A probationer, therefore,

God, I shall firmly and constantly adhere to the same ; and, to the utmost of my power, shall, in my station, assert, maintain, and defend the said doctrine, worship, discipline, and government of this Church, by Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies ; and that I shall, in my practice, conform myself to the said worship, and submit to the said discipline and government, and never endeavour, directly or indirectly, the prejudice or subversion of the same. And I promise that I shall follow no divisive courses from the present establishment in this church ; renouncing all doctrines, tenets, and opinions whatsoever, contrary to or inconsistent with the said doctrine, worship, discipline, and government of this church.'

unless he be engaged to assist a clergyman disabled by age or sickness, remains without any regular employment, or fixed charge, until he receive a presentation to a church. He then undergoes a second trial before the presbytery, to whom the presentation is addressed. He is required by them to repeat his subscription to the formula ; and if they find that he is not qualified in respect of doctrine, literature, or moral character, their sentence, declaring him unqualified, unless it be reversed by their ecclesiastical superiors, renders his presentation void.

2. In the year 1565, an Assembly of the Church, which prepared matters for the establishment of Presbyterian government in Scotland, expressed most accurately, in a message to Queen Mary, their opinion concerning the proper method of settling vacant parishes. “ Our mind is not, that her majesty, or any other patron, should be defrauded of their just patronages ; but we mean, whensoever her majesty, or any other patron, do present any person unto a benefice, that the person presented should be tried and examined by the judgment of learned men of the church, such as are the present superintendents : and as the presentation unto the benefice appertains unto the patron, so the collation, by law and reason, belongs unto the church ; and the church should not be defrauded of the collation, no more than the patrons of their presentation ; for otherwise, if it be lawful to the patrons to present whom they please, without trial or examination, what can abide in the church of God but mere ignorance ?” * When Presbyterian government was established, the

* Petrie's Church History, p. 349.

spirit of this message was followed out in the acts of the parliament of Scotland, 1567 and 1592,* by which “the presentation of laick patronages is reserved to the just and ancient patrons; and presbyteries are bound and astricted to receive and admit whatsomever qualified minister presented by his majesty or laick patrons.” When Presbyterian government was revived at the Revolution, an act of the Scots parliament 1690, c. 23, constituted the heritors and kirk-session of every parish, patrons; but that act was repealed by an act of the British parliament 1712, c. 12, which restored patrons to their ancient rights; declaring, “that the presbytery of the respective bounds is obliged to receive and admit in the same manner, such qualified persons as shall be presented by the respective patrons, as the persons presented before the making of the act ought to have been admitted;” and at the same time providing, “that in case the patron of any church shall neglect or refuse to present any qualified minister to such church that shall at any time be vacant, for the space of six months after such vacancy shall happen, the right of presentation shall accrue and belong for that time to the presbytery of the bounds where such church is, who are to present a qualified person for that vacancy, *tanquam jure devoluto*.”

The Church of Scotland complained of this act as an invasion of its privileges, made various ineffectual efforts to obtain a repeal of the act, and during a great part of the last century gave annual instructions to the commission of the General Assembly to make due application to the king and parliament for redress of the

* See Act 1567, c. 7, and 1592, c. 114, in Appendix.

grievance of patronage, in case a favourable opportunity for so doing should occur. But since the year 1784, this article has been left out of the instructions given to the commission. A great majority of the members of the church, both ministers and laymen, are now convinced, that patronage affords the most expedient method of settling vacant parishes; and whatever difference of opinion may still prevail upon the question of expediency, few pretend to doubt that patronage is the law of the land, interpreted and confirmed by various decisions of the civil courts, and by the uniform train of the judgments pronounced by the church during a long course of years.

Patronage would be a grievance, if the patron had it in his power, by neglect, or from any improper motive, to keep a parish long vacant. But the law, with a becoming attention to the religious instruction of the people, has empowered the presbytery, if the patron does not present for the space of six months after the commencement of the vacancy, to take such steps as to them appear proper for supplying the vacant parish with a minister.

Patronage might be made an instrument of oppression, if it implied a right to compel a person to enter into the church, or to move against his inclination from one charge to another. But this evil, which had been felt and complained of upon the revival of the right of patronage, was effectually removed by the following clause of the act 1719, c. 29. “Whereas great obstructions have been made to the planting, supplying, or filling up of vacant churches in Scotland with ministers qualified according to law; patrons presenting persons to churches who are not qualified, by taking the oaths appointed by law, or

who, being settled in other churches, cannot, or will not accept of such presentations : Be it enacted, That if any patron shall present any person to a vacant church who shall not be qualified, by taking and subscribing the said oath in manner aforesaid, or shall present a person to any vacancy, who is then or shall be pastor or minister of any other church or parish, or any person who shall not accept or declare his willingness to accept of the presentation and charge to which he is presented, within the said time, such presentation shall not be accounted any interruption of the course of time allowed to the patron for presenting ; but the *jus devolutum* shall take place, as if no such presentation had been offered ; any law or custom to the contrary notwithstanding.”

The right of patronage would be productive of the most pernicious consequences, if a person holding that right were permitted to receive a sum of money as a compensation for the exercise of it. But the abhorrence of simoniacal practices is in this country so strong and general, that reports and suspicions of such practices are extremely rare : And the Church, by the laws against simony, which she orders to be read to every candidate for obtaining either a licence or a settlement, holds forth a warning and a pledge, that all her vigilance and authority will be exerted in preventing that corruption of the morals of the clergy, and that complete degradation of the whole order, which would advance with rapid strides, if the moderate endowments provided by the ecclesiastical establishment of Scotland were to become a matter of traffic.*

The Church would have reason to complain of pa-

* See Appendix, No. XI.

tronage, “if it were lawful to patrons to present whom they pleased.” But the effectual remedy against the abuse of patronage is found in the absolute and final powers as to the trial and qualifications of ministers, which, having been conveyed to the church from the Lord Jesus, are recognised by the acts 1567 and 1592, which established Presbyterian government in Scotland, and also by the act 1719, c. 29. the last British statute upon the subject, which, in the concluding clause, declares and enacts, “That nothing herein contained shall prejudice or diminish the right of the church, as the same now stands by law established, as to the trying of the qualities of any person presented to any church or benefice.” A licence is the stamp of the church, declaring that a person is qualified to receive a presentation. She has herself to blame if the stamp be improperly affixed; but her privileges are completely secured against invasion, when the choice of patrons is by law restricted to those whom she has licensed to preach the gospel, and when it is competent for her to extend her trial to those particular qualifications which local circumstances render indispensable. The church has found, since her own act in 1779, that a presentation granted to a person who had obtained his license from one of the dissenting classes in England, was void, and that the patron was bound to present another.* She has found that a total ignorance of the Gaelic language

* Assembly 1798, session 5th. “The Assembly found, that Mr. James Gary, presentee to the parish of Brechin, has not gone through that course of University education in philosophy and theology which the laws of this church require, as necessary for all the probationers thereof: that the certificate of license and ordination he has produced from three Protestant Dissenting Ministers in England, cannot, in consistency with the laws of the

disqualifies a person from officiating in some districts of Scotland ;* and I have no doubt of her having a right to find, that a natural incapacity of being heard in the place of worship where a parish assembles, is a legal disqualification for being minister of that parish.

While the power of the patrons is thus limited by the powers of the church, the right of patronage is effectually guarded against capricious invasion : For, unless the church-courts find the presentee not qualified, “ they are bound and astricted to receive him.” In the year 1592, when Presbyterian government obtained a legal establishment in Scotland, it was provided by law, that “ in case the presbytery refuses to admit any qualified minister presented to them be the patron, it shall be lauchfull to retain the haile fruits of the said benefice in his awin hands.”† And the civil courts applying this ancient statute in different cases, have found, that if a presbytery refuse to admit a person presented by the legal patron, for any other cause than a want of sufficient qualifications, and proceed to settle another, their sentence has not the effect of giving the minister whom they settle a right to the emoluments of the benefice ; but the patron is entitled to retain the stipend in his hands, in

church, be held as qualifying him to accept a presentation to any parish in this church : and that the deed of the presbytery of Chanonry, of September 5, 1796, laid before the presbytery of Brechin along with the presentation, was rash and unwarranted, and did not qualify him to accept of that presentation : Therefore remitted this cause to the presbytery of Brechin, directing them to pronounce, at their next meeting, a sentence, refusing to sustain the presentation to Mr. Gary, in respect that the presentee is not qualified according to the laws of the church.” See also Session 8, of Assembly 1798.

* Assembly 1772, session 9.

† See Act 115, 1592, in Appendix.

the same manner as if the parish had continued vacant.

Voice of the
People. 3. The idea of a right in the whole congregation to appoint and ordain their own minister, belongs to the Independents or Congregationalists, is inconsistent with the principles of Presbyterian government, and has been often disclaimed by the Church of Scotland, both in ancient and in modern times. The idea of a right in the people to elect a person to be presented to the presbytery, that in consequence of that election he may by them be ordained and admitted, is inconsistent with the nature of the religious establishment of this country, in which the state, by reserving to the patrons their ancient rights, ascertains a particular mode of inducting into the church those who are to receive the legal emoluments. The idea of a right in the heritors and elders, as representatives of the parish, to elect a minister, arises purely from the act of the parliament of Scotland 1690, c. 23, which, in the preamble of the British statute 1712, c. 12, is said to have proved inconvenient, and to have occasioned great heats and divisions. That act is now repealed; and although, from the influence which the heritors and elders may be supposed to have in their respective parishes, it ought always to be considered as a matter, not of courtesy only, but of prudence and propriety, to solicit their concurrence, the settlement of a presentee does not depend upon their consent.

Yet the constitution of our church, regarding the inhabitants of a parish as deeply interested in the character of the person who is to minister to them in holy things, has not overlooked them in his settlement, but in two different ways affords them an op-

portunity of expressing their sentiments. Before a presbytery, to whom a presentation is addressed, take the candidate upon the second trials, which, if a probationer, he is, by the laws of the church, required to undergo, they appoint him to preach in the parish church : And whether he is a probationer or an ordained minister, they assemble there upon a day, of which notice had been given to the parish at least ten days before ; and, after a sermon suited to the occasion by one of their number, they inform the people, that a presentation in his favour has been received, and ask them to subscribe a paper named a call, inviting him to be their minister, and promising him subjection in the Lord.* It has been the immemorial practice of the Church of Scotland, by appointing the moderation of a call, to give the people an opportunity of encouraging the labours of their future minister, by addressing to him this invitation ; and in consequence of this practice, one of the legal steps in the settlement of a minister, is a sentence of the presbytery sustaining the call. But, whatever was the state of matters at the time when the practice began, it is now understood, that a call may be sustained, however small the number of subscribers. For although the matter was long vehemently contested, and is still occasionally the subject of discussion, the church-courts have shown, by the train of their decisions during the greater part of the last century, that they do not consider themselves as warranted by law to refuse admission to a presentee upon account of any deficiency in the subscriptions to his call.

The second way in which the constitution of our

* Note B.

church provides for the voice of the people being legally heard in the admission of their minister, is by giving the inhabitants of a parish a right to appear as accusers of the presentee. At any time during the course of his trials, they may give in to the presbytery a libel, charging him with immorality of conduct, or unsoundness of doctrine. When they present the libel, they bind themselves, under pain of ecclesiastical censure, to prove it; but the presbytery is not at liberty to proceed to the settlement till the libel be discussed. After the trials of the presentee are finished, all who have any objections to his life or doctrine are summoned, by a paper read from the pulpit, which we call an edict, to appear on the day appointed for his ordination, which is at the distance of not less than ten days from the reading of the edict, and may then, without the formality of a libel, state their objections as matter of charge. The charge will be disregarded by the presbytery if it is frivolous; and as proof must be instantly adduced, the edict does not afford any occasion of vexatious delay; but it gives persons the most unacquainted with the forms of business an opportunity of stating their personal knowledge of any circumstance in the character and conduct of the presentee which renders him unworthy of being a minister of the Gospel; and by exhibiting the jealousy with which the constitution of our church watches over the qualifications of intrants, it furnishes a lesson of circumspection to all who direct their views to the church.

4. If no bar has arisen in consequence of the edict, the presbytery proceed, upon the day of which notice had been given, with a solemnity corresponding to

Solemn deed of
the Presbytery.

the nature of the ministerial office, to complete the settlement of the presentee. After a sermon suited to the occasion, one of their number, who had been appointed to perform that service, in their presence, and in the face of the congregation, proposes to the presentee the questions appointed by the 10th act of the General Assembly 1711 to be put to ministers at their ordination;* and having

* Questions to be put to ministers at their ordination. "1. Do you believe the Scriptures of the Old and New Testament to be the word of God, and the only rule of faith and manners? 2. Do you sincerely own and believe the whole doctrine contained in the Confession of Faith, approved by the General Assemblies of this Church, and ratified by law in the year 1690, to be founded upon the word of God? And do you acknowledge the same as the confession of your faith; and will you firmly and constantly adhere thereto, and, to the utmost of your power, assert, maintain and defend the same, and the purity of worship as presently practised in this national church, and asserted in the 15th Act of Assembly, 1707? 3. Do you disown all Popish, Arian, Socinian, Arminian, Bourignian and other doctrines, tenets and opinions whatsoever, contrary to and inconsistent with the foresaid Confession of Faith? 4. Are you persuaded that the Presbyterian government and discipline of this church are founded upon the Word of God, and agreeable thereto? And do you promise to submit to the said government and discipline, and to concur with the same, and never endeavour, directly nor indirectly, the prejudice or subversion thereof, but, to the utmost of your power, in your station, to maintain, support and defend the said discipline and Presbyterian government, by Kirk-sessions, Presbyteries, Provincial Synods and General Assemblies, during all the days of your life? 5. Do you promise to submit yourself willingly and humbly, in the spirit of meekness, unto the admonitions of the brethren of this presbytery, and to be subject to them, and all other presbyteries and superior judicatures of this church, where God in his providence shall cast your lot; and that according to your power you shall maintain the unity and peace of this church, against error and schism, notwithstanding of whatsoever trouble or persecution may arise; and that you shall follow no divisive courses from

obtained by his answers the declarations, promises, and engagements which that act requires, he proceeds to invest him with the full character of a minister of the gospel, conveying to him by prayer and imposition of the hands of the presbytery, all the powers implied in that character. He then, in name of the presbytery, receives and admits the person thus ordained, to be minister of the vacant parish ; by which deed the presbytery, in the execution of the office committed to them as a branch of the Established Church, constitute a connexion between him and the inhabitants of that parish, which gives him a legal title to the emoluments provided by law for the person who officiates there, which, during its subsistence, renders him incapable of holding any other charge that has the cure of souls, and which, during his life, can be dissolved only by the act of the church, either accepting his resignation, or deposing him from the office of a minister, or translating him to a different charge.

If the person presented had been formerly ordained, it is not competent to repeat the act of ordination.

the present established doctrine, worship, discipline and government of this church? 6. Are not zeal for the honour of God, love to Jesus Christ, and desire of saving souls, your great motives and chief inducements to enter into the functions of the holy ministry, and not worldly designs and interest? 7. Have you used any undue methods, either by yourself or others, in procuring this call? 8. Do you engage, in the strength of Jesus Christ our Lord and Master, to rule well your own family, to live a holy and circumspect life, and faithfully, diligently and cheerfully to discharge all the parts of the ministerial work, to the edification of the body of Christ? 9. Do you accept of and close with the call to be pastor of this parish, and promise, through grace, to perform all the duties of a faithful minister of the gospel among this people?"

But he is required by the presbytery to declare in face of the congregation, that he consents and adheres to the declarations, promises and engagements implied in his answers to the questions which were put to him when he was ordained ; and he is then received and admitted minister of the parish.

In this manner does the constitution of the Church of Scotland preserve the rights of the church, of the patron, and of the people ; and from the union of the three in the settlement of vacant parishes, there is every security which the nature of the case admits, that no minister shall enter into this church who is deficient in essential qualifications, and who may not hope, by the blessing of God upon his assiduous labours, to render himself acceptable and useful to those over whom the Holy Ghost hath made him an overseer.

SECTION IV.

ON THE JUDICATORIES WHICH COMPOSE THE CONSTITUTION OF THE CHURCH OF SCOTLAND.

Kirk-Sessions. THE lowest judicatory in the Church of Scotland is the kirk-session ; composed of the minister of the parish, who is officially moderator, and of lay-elders. New elders are chosen by the voice of the session. After their election has been agreed upon, their names are read from the pulpit, in a paper called an edict, appointing a day, at the distance of

not less than ten days, for their ordination. If no member of the congregation offers any objection upon that day, or if the session finds the objections that are offered frivolous, or unsupported by evidence, the minister proceeds, in face of the congregation, to ordain the new elders; that is, to set them apart to that office by prayer, accompanied with an exhortation to them, and an address to the people. According to the ancient laws and the universal practice of the church, elders are required, at the time of their ordination, to declare explicitly their assent to all that is contained in the Confession of Faith.* The session is legally convened, when summoned by the minister from the pulpit, or by personal citation to the members. But it cannot exercise any judicial authority, unless the minister of the parish, or some other minister, acting either in his name, or by appointment of the presbytery, constitutes the meeting by prayer, and presides during its deliberations. It has a clerk of its own nomination, and an officer to execute its orders.

Presbyteries. The number of parishes which may compose a presbytery is indefinite. In some of the populous districts of Scotland, there are thirty ministers in a presbytery: in some remote situations, where a few parishes cover a great district, not more than four. As the General Assembly has the power of disjoining and erecting presbyteries at its pleasure, their bounds may be altered, or their number increased, according to the change of circumstances. At present, there are seventy-eight presby-

* Act 7th, Assembly 1690. Act 11th, 1694. Act 11th, 1700. Act 4th, 1720. See sentence of General Assembly in case of Dundee, 1800, Session 7th.

teries in the Church of Scotland.* A presbytery consists of the ministers of all the parishes within the bounds of that district, of the Professors of divinity, if they be ministers, in any university that is situated within these bounds, and of representatives from the kirk-sessions in the district. Every kirk-session has the right of sending one elder; so that unless there be a collegiate charge, or an university within the bounds of the district, the number of ministers and of elders in any meeting of presbytery may be equal. Independently of the local business of the district, which generally requires frequent meetings in the course of the year, two meetings are necessary for the annual choice of its representatives in the General Assembly; one, at which a day, not less than ten days distant, is appointed for the election; another, at which the election is made. A moderator, who must be a minister, is chosen twice a-year. The presbytery has a clerk of its own nomination, and an officer to execute its orders.

Provincial Synods. Three or more presbyteries, as the matter happens to be regulated, compose a provincial synod. There are at present fifteen provincial synods in the church; most of which meet twice in the year.† Every minister of all the presbyteries, within the bounds of the synod, is a member of that court, and the same elder who had last represented the kirk-session in the presbytery, is its representative in the synod; so that the number of ministers and of elders may be equal. Neighbouring synods correspond with one another, by sending one minister and one elder, who are entitled to sit, to

* Note C.

† Note D.

deliberate, and to vote with the original members of the synod to which they are sent. At every meeting of synod, a moderator, who must be a minister, is chosen. A synod has its own clerk and officers.

General Assembly. The highest ecclesiastical court is the General Assembly.

The nine hundred and thirty-six ministers who enjoy benefices,* and possess ecclesiastical authority in Scotland, attend personally the presbyteries and synods into which they are distributed; but they sit in the supreme court by representation; and the proportion which the representation of the several presbyteries in the General Assembly bears to the number of parishes within each presbytery, was settled not long after the Revolution, in the following manner:† “That all presbyteries consisting of twelve parishes, or under that number, shall send in two ministers and one ruling elder; that all presbyteries consisting of eighteen parishes, or under that number, but above twelve, shall send in three ministers and one ruling elder; that all presbyteries consisting of twenty-four parishes, or under that number, shall send in four ministers and two ruling elders; and that presbyteries consisting of above twenty-four parishes, shall send five ministers and two ruling elders: that collegiate kirks, where there use to be two or more ministers, are, so far as concerns the design of this act, understood to be as many distinct parishes; and that no persons are to be admitted members of Assemblies, but such as are either ministers or ruling elders.” And as the

* Dr. Singers’ Statement of the numbers, &c., of the Clergy of Scotland.

† Act 5th, Assembly 1694.

number of the ministers of Edinburgh continued to increase after the Revolution, it was provided by a subsequent Act,* “That each presbytery whose number doth exceed thirty ministerial charges, shall send to the General Assembly six ministers and three ruling elders.” The sixty-six royal burghs of Scotland are represented in the General Assembly by ruling elders; Edinburgh sending two, and every other burgh one: and each of the five universities in Scotland is represented by one of its members, who may be either a minister or an elder.†

According to this proportion of representation, the General Assembly, in the present state of the church, consists of the following members:—

Ministers representing presbyteries,	200
Elders representing presbyteries,	89
Elders representing royal burghs,	67
Ministers or elders representing universities,	5
	<hr/>
	361

It appears from this list, that if all the three hundred and sixty-one members of Assembly were present, the majority would be ministers: but in the Assembly 1806, the fullest I ever witnessed, there sat only three hundred and twenty-two. There had voted in the competition for a vacant office, on the first day of meeting, three hundred and fourteen.

* Act 6th, Assembly 1712.

† By Acts of Assembly 1641 and 1704, the ‘Scots kirk of Campvere was empowered to send commissioners to the General Assembly: but that establishment was abolished some years ago by the Batavian republic.

The moderator, the two candidates, who were members, and one other member who was present, did not vote, but four members arrived on some of the following days.*

The General Assembly, so respectable from the number and the description of the persons who compose it, is honoured with a representation of the Sovereign by the Lord High Commissioner, whose presence is the gracious pledge of protection and countenance to the established church, and the symbol of that sanction which the civil authority of the state is ready to give to its legal acts.

The Church of Scotland claims the right of meeting in a General Assembly, as well as in inferior courts, by its own appointment. But it also recognises the right of the supreme magistrate to call synods, and to be present at them; and the two rights are easily reconciled, when there subsists between the church and the state that good understanding which the true friends of both will always study to cultivate. As, by the constitution of the Church of Scotland, the ecclesiastical business of the country cannot be conducted without the frequent meeting of General Assemblies, the Act 1592, which established Presbyterian government, declares, that “it shall be lawful to the kirk and ministers, every year at the least, and oftener, *pro re nata*, as occasion and necessity shall require, to hold and keep General Assemblies:” and the Act June 7, 1690, which restored the Presbyterian church government, ratified and established by act 1592, “appoints the first meeting of the General Assembly of this church, as above esta-

* Note E.

blished, to be at Edinburgh the third Tuesday of October next to come, in this instant year 1690." In pursuance of these acts, the General Assembly meets annually, now always in the month of May. On the first day of meeting a moderator is chosen ; it has a respectable establishment of clerks and officers ; it continues to sit ten days, and is then dissolved, first, by the moderator, who, in the name of the Lord Jesus, the King and Head of his church, appoints another Assembly to be held on a certain day in the month of May of the following year,—and afterwards by the Lord High Commissioner, who, in his majesty's name, appoints another Assembly to be held upon the day which had been mentioned by the moderator.

The times of electing members of Assembly, and the forms of the instruments of their election, which are called their commissions, are precisely regulated by acts of Assembly ; and a strict conformity to the regulations prescribed by these acts is indispensable.

On the evening before the Assembly meets, commissions are lodged with the clerks, who prepare from them a roll of Assembly, to which they are afterwards instructed to add the names of members whose commissions are given in on subsequent days, and from which they are instructed to erase the names of those whose commissions are found informal.

On the day appointed for the meeting of Assembly, which is always a Thursday, the Lord High Commissioner goes in state to the High Church of Edinburgh, where a sermon is preached by the moderator of the last Assembly ; after which his grace proceeds to state to the Assembly-house, which is an aisle of the High Church, where a throne is prepared for his

reception.* The moderator of the last Assembly opens the meeting by prayer, the clerks read the roll of members which they had prepared, and one of the ministers upon that roll is chosen moderator.

The first business of the new moderator is to receive a communication from the throne, of the commission appointing the nobleman who delivers it to represent the sovereign, and of a letter from the sovereign to the General Assembly. After the royal commission and letter are read by the principal clerk, and ordered by the house to be recorded, the Lord High Commissioner addresses from the throne a speech to the Assembly, and the moderator, in their name, makes a suitable reply.

The court being thus constituted, a committee is appointed to prepare an answer to the king's letter; and if the General Assembly judge it proper, in the circumstances of the times, to present an address to the sovereign, the same committee is instructed to frame a dutiful and loyal address, embracing the topics which had been suggested in the motion for an address. Another committee is appointed to examine commissions. Both committees meet on Thursday evening.

The clerks having, upon Thursday, been directed by the Assembly to divide, under the inspection of the moderator, all the members upon the roll which they had prepared into two great committees,—the committee of bills and the committee of overtures,—the names of the members upon each committee are read by the clerks in the Assembly upon Friday—a meeting spent in prayer—during the intervals between two of the addresses to heaven, offered by the minis-

* Note F.

ters whom the moderator calls to pray : additions are made to each committee, as other members arrive. These two great committees hold their first meeting on the evening of Friday, the second on the evening of Saturday, the third on the evening of Monday. They meet afterwards as they are appointed, and no business comes before the Assembly but through them.*

To the committee on bills are given in all papers relative to private causes which come from the inferior courts. To the other committee are given in overtures, that is, propositions from synods, presbyteries, or individual ministers, for a new law of the church, for the repeal of an old law, or for any regulation or exercise of ecclesiastical authority which circumstances appear to require. Either committee may refuse to transmit to the Assembly what is laid before them ; but the business may be brought in under the form of protest. Although they have not the absolute power of excluding any matter from the consideration of the Assembly, the resistance which they make to the introduction of it is a call upon the Assembly to examine with a degree of suspicion what is thus resisted.

Upon Friday, ministers are named to preach before his grace the Lord High Commissioner, in the High Church of Edinburgh, on the two Sundays during his commission.

Upon Saturday, the General Assembly examines the answer to the king's letter, and the address to the king, if any had been ordered ; which, having been prepared by the committee appointed for that purpose, pass through the committee of overtures, and form the first part of its report to the Assembly.

* Note G.

The committee on commissions having been also instructed to report to the committee on overtures, any objections made to commissions form the second part of its report, and occupy the attention of the Assembly before it can enter upon any further business. Upon Saturday or Monday, as the case happens, the Assembly, having discussed the objections to commissions, receives other parts of the report of the committee on overtures, and the report of the committee on bills ; and proceeds to make such arrangements as the nature and extent of the two reports render expedient.

In discussing business the General Assembly has adopted some of the forms necessary in all great meetings, the observance of which, supported by the authority of the moderator, and the general feeling of the house, is commonly sufficient to preserve a becoming degree of order. Upon a division, the sense of the house is collected by the names on the roll being called by one of the clerks, and the votes, as they are given, being marked by the principal clerk, under the eye of the moderator.

Counsel are heard at the bar of the Assembly when it is judging private causes, but not when it is discussing overtures, which are matters of internal regulation ; and, although most of the questions which come before a church court may be presumed to be not of general, but of local concern, yet occasions often arise when the education and habits of the clergy, together with the legal knowledge and extensive information possessed by some of the lay-members who take part in the discussion, render the debates in the General Assembly an interesting object of attention to all classes of the community.

Subordination of Judicatories. In order to understand the constitution of the Church of Scotland, it is necessary to consider the four courts which have been described, as they are bound together by that subordination which is characteristic of Presbyterian government.

In all governments conducted by men, wrong may be done from bad intention, from the imperceptible influence of local prejudices, or from some other species of human infirmity. To prevent the continued existence of wrong, it is provided, in every good government, that sentences which are complained of may be reviewed ; and although there must be a last resort where the review stops, the security against permanent wrong will be as effectual as the nature of the case admits, if there is a gradation of authority, by which those who had no concern in the origin of the proceedings, have a right to annul or confirm them, as they see cause. This is the great principle of our republican constitution, which does not invest any individual with a control over his brethren, but employs the wisdom and impartiality of a greater number of counsellors to sanction the judgments, or to correct the errors of a smaller.

When presbyteries pronounce decisions with regard to manse and glebes, they act in a civil capacity, discharging a function which the law of the land has committed to them for the benefit of the Established Church ; and their judgments, possessing an authority which is derived merely from human law, may be affirmed or reversed by the civil courts. But every ecclesiastical business that is transacted in any church-judicatory, is subject to the review only of its ecclesiastical superiors, and may come before

the court immediately above it in four different ways.

1. The superior court may take up the business by an exercise of its inherent right of superintendence and control. For in testimony of that subordination of judicatories which pervades the Church of Scotland, it is a standing order, that the books, containing the minutes of the inferior court, shall be laid before the court immediately above it. In the ordinary course of ecclesiastical transactions, this is often neglected. But a superior court may, at any time, issue a peremptory mandate for the production of the books of its subordinate judicatories ; and having the whole train of their proceedings thus regularly submitted to its inspection, it may take such measures, as, upon this review, appear to be necessary, in order to correct errors, to redress wrong, to enforce the observance of general rules, and to promote the edification of the people, in the several districts within its bounds.

2. When an inferior court entertains doubt, or apprehends difficulty and inconvenience, it sometimes declines giving a decision, and refers the matter upon which it had deliberated to the superior court, whose wisdom may solve the doubt, and whose authority may obviate the inconvenience. In this case, the members of the court which had referred are not precluded from sitting and judging with the court to which the reference is made, in the same manner as if it had come from any other quarter. Although inferior courts are entitled, by the constitution, to refer to the court above them, and although a reference may, in some circumstances, be highly proper, it is, generally speak-

ing, more conducive to the public good, that every court should fulfil its duty by exercising its judgment; and it is not creditable for judges to refer in any case where suspicions may be entertained, that the reference arose from a desire to retain the right of voting in the superior court.

Appeal. 3. When a party conceives that the judgment of an inferior court is unjust or erroneous, he is entitled to seek redress by appealing to the court above it. The appeal, if conducted in the regular manner which the laws of the church prescribe, stops the final execution of the judgment, brings the whole proceedings of the court which had pronounced the judgment under review, and sists the members at the bar of the superior court; that is, they are not entitled to deliberate and vote in the review of their own judgment; but they are called to state, in such manner as they think proper, the reasons upon which their judgment proceeded; so that the sentence appealed from is commonly defended before the superior court, both by the party who considered it as favourable to his interest, and also by the members who concurred in pronouncing it. If the members of an inferior court have acted according to the best of their judgment, and with good intention, they incur no blame although their sentence be reversed; but they are answerable to the superior court for every part of their conduct in the business brought under review, and they may be found deserving of censure.

Complaint. 4. It is possible that the judgment of an inferior court may be favourable to the views of the only party who had sisted himself at their bar; that it may do no wrong to any individual; or that the party who is aggrieved may decline the

trouble of conducting an appeal ; and yet the judgment may appear to some of the members of the court contrary to the laws of the church, hurtful to the interests of religion, and such as involves in blame or in danger those by whom it is pronounced. In this case, the minority have a right to record in the minutes of the court their dissent, by which they save themselves from any share of the blame or the danger ; and they have also a right to complain to the superior court. This complaint brings the whole proceedings under review, and sists the members who concurred in the judgment, the complainers, and all parties, at the bar of the superior court ; and if the complaint appear to be well founded, it may have the effect, not only of bringing censure upon those who concurred in the judgment complained of, but also of reversing that judgment, and placing matters in the same situation in which they were before the judgment was pronounced. It was, in my remembrance, a matter of doubt, whether, if there was no appeal by a party, a complaint from the minority of a court could have the effect of reversing the judgment of the majority. But the doubt has been completely removed by a number of decisions in different years, conformable, in my opinion, to the nature and reason of the case ; and it is now understood to be part of the law of the church, that upon a complaint from the minority of an inferior court, the court of review may dispose of the sentence complained of, in the same manner as if it had been brought before them by the appeal of a party.* The members of every

* The sentence here subjoined will serve as an example how far the effect of a complaint may go. Assembly 1798, session 8.
“ A dissent and complaint by Mr. Robert Home at Polwarth,

church judicatory are thus taught to consider themselves as guardians of the constitution ; they are called to attend, not only to the particular business concerning which they judge, but also to that general interest of the church, which, in the eye of parties, may be of little importance ; and they have the satisfaction of knowing, that by discharging their duty with intelligence and firmness in the inferior courts, they may, in the end, obtain full redress of the injury which the church might have sustained by judgments in which parties were willing to acquiesce.*

Dr. Robert Douglas at Galashiels, and others, from a sentence of the synod of Merse and Tiviotdale, of 24th October last, respecting the settlement of Mr. James Young in the parish of Legertwood, heard : Two several motions were made, and the roll being called, and votes marked, the Assembly, by a great majority, found, that Mr. James Young was not qualified, according to the laws of this church, to accept the presentation to the church of Legertwood ; and therefore reversed the sentence of the synod of Merse and Tiviotdale in October last, complained of, recommending to the presbytery of Lauder to sustain that presentation : found, that the presbytery of Lauder acted with great irregularity in proceeding, as they stated at the bar, to admit Mr. James Young upon the 6th of December last, notwithstanding the dissent and complaint of several members of the synod : Annulled all the proceedings of the presbytery of Lauder in relation to the settlement of the parish of Legertwood, subsequent to the meeting of the Synod of Merse and Tiviotdale in October last ; rescinded the settlement of Mr. James Young, and declared the parish of Legertwood vacant, as if no such settlement had taken place. The Assembly appointed an extract of this sentence to be sent by the moderator in a letter to George Kerr, Esq. of Moriston, patron of the parish of Legertwood ; and appointed the presbytery of Lauder to meet the second Thursday of June next, in order to appoint supplies for the vacant parish of Legertwood."

* Note H.

SECTION V.

ON THE DISTRIBUTION OF POWER AMONGST THE
JUDICATORIES OF THE CHURCH OF SCOTLAND.

IN delineating any constitution, it is necessary to explain the manner in which the three powers known by the name of the Judicial, the Legislative, and the Executive, are distributed and exercised.

Judicial Power. 1. The judicial power of the church appears in the infliction or removal of those censures which belong to a spiritual society. This power is not intrusted by the constitution of our church to the minister of a parish; for, while he performs various offices in his personal capacity, it is only when he sits in the kirk-session as moderator, or acts by their authority, that he exercises the judicial power of rebuking, of suspending, or excluding from the privileges of the church, and of absolving from censure. While those inhabitants of a parish who are of the communion of the Established Church, are thus secured from suffering by the caprice of an individual, they are also guarded against the intrusion of a neighbouring jurisdiction. They are placed by the constitution, under the inspection of the kirk-session of their own parish: there the judicial power, when it is exercised with regard to laymen, must originate; and no other ecclesiastical court is entitled to interfere in the first instance: although every judicial discussion before a kirk-session may ascend through the gradation of judicatories, so as to be finally decided by the General Assembly.

The office of a minister being superior to that of

an elder, and the minister of a parish being officially the moderator of his own kirk-session, he is not amenable to their jurisdiction. His immediate superiors are the presbytery from whom he received the charge of his parish, who have a title, at any time, to inquire in what manner he performs his official duty, who exercise a censorial inspection over his whole conduct, and who are the only court before whom it is competent for those who wish to appear as his accusers in an ecclesiastical process, to lodge any complaint against his doctrine, or his moral character. Ministers, besides being liable to the same censures as other Christians, may be suspended from the exercise of their ministry, or deposed; and, in consequence of the connexion between the church and the state, a sentence of deposition, regularly pronounced by the church-courts, deprives a minister of that right to the stipend and other emoluments which he acquired by his admission, and renders his parish vacant in the eye of law.

It is a matter of essential justice, that every man who is to be tried should know the shape which his accusation must assume, and the form in which he is required to make his defence. The strict observance of a known established mode of trial is peculiarly necessary in the judicial proceedings of the church, where sentences which affect the character and comfort of the parties, and which deprive a minister of his usefulness and his freehold, are pronounced by large popular assemblies, the members of which, not being conversant in legal discussion, are in danger of deciding from some strong present impression. One of the first objects to which the Church of Scotland turned her attention after the establishment of pres-

byterian government at the Revolution, was the state of her judicial proceedings; and what is called the form of process, a code of laws which regulates the manner of commencing, of conducting, and of terminating processes for censure, was enacted by the church in the year 1707. In 1787, Lord Robertson, who was then procurator for the Church of Scotland, and who, after filling that office for many years with high reputation, became one of the Lords of Council and Session, made an attempt to obtain the sanction of the church to a more perfect code, into which he had introduced various improvements, proceeding upon the liberal accurate ideas which are congenial to his mind. The attempt failed of success: and from the difficulties with which it appeared to be attended, there is no great reason to hope that we shall soon obtain the enactment of any law of the church, so complex as the case would require. But we have the satisfaction of thinking, that our form of process is in many respects excellent; and that with the help of those explications which some parts of it have already received from practice, and with a due attention to the rules of Christian prudence and charity, it may be executed in such a manner as to attain the great purposes of a judicial code.*

2. Every judicatory is occasionally
 Legislative Power. called to enforce the laws of the church, by making such special enactments, in conformity to those general laws, as are suggested by the circumstances of the district under its jurisdiction; and church-courts, like all others, have a right, within certain limits, to regulate the forms of their own proceedings. It is not to such partial enact-

* Note I.

ments or regulations that we refer, when we speak of the legislative power of the church. We apply that term to the power of making standing laws concerning matters of general importance, which are binding upon all the members and judicatories of the church. From the first establishment of Presbyterian government in 1560, till some years after the Revolution, such laws proceeded from the sole authority of the General Assembly. But an act of the church in the year 1697, which we are accustomed to call the barrier act, prescribes the following mode of enacting permanent and standing constitutions. The proposal of making a new general law, or of repealing an old one, which, in our ecclesiastical language, is termed an overture, originates with some individual, who generally lays it before his presbytery or synod, that, if they approve, it may be sent to the General Assembly as their overture. The General Assembly may dismiss the overture, if they judge it unnecessary or improper, or adopt it as it was sent, or introduce any alteration which the matter or the form seems to require. If it is not dismissed, it is transmitted by the General Assembly, in its original or its amended form, to the several presbyteries of the church for their consideration, with an injunction to send up their opinion to the next General Assembly, who may pass it into a standing law, if the more general opinion of the church agree thereunto, that is, if not less than forty presbyteries approve.*

The barrier act,† according to its own preamble, was intended “for preventing any sudden alteration, or innovation, or other prejudice to the church, in either doctrine, worship, discipline, or government,

* Note K.

† See Appendix, No. V.

now happily established therein :” and any person who considers the momentary impressions incident to all large bodies of men in the heat of debate, or in their zeal for a particular object, will not think it advisable that a court so numerous as the General Assembly, which sits once a-year for ten days, should have the uncontrolled power of making standing laws upon the spur of the occasion. At the same time, it must be acknowledged, that the operation of the barrier act tends to produce great tardiness in the legislation of the church. For some presbyteries neglect to send any opinion ; others disapprove ; others propose alterations ; so that many years sometimes clapse before the consent of forty presbyteries can be obtained to the whole complex proposition that was transmitted to them. The remedy for this tardiness is found in that legislative authority which seems to be reserved to the General Assembly by the barrier act. The Assembly 1695, which prepared the overture that no new acts relating to the doctrine, worship, or government of this church be made, until they be first transmitted to the several presbyteries, does in the meantime revive the acts of the former Assemblies made thereanent ; and the Assembly 1697, upon the same day on which it converted the overture of 1695 into a binding rule and constitution to the church, does obtest and beseech all the ministers of this church “ to consider how much it is their duty to give punctual and exemplary obedience to all the acts and appointments of the Assemblies thereof.” Accordingly, ever since that period, when the immediate enactment of the new law proposed in an overture appeared essential for the good of the church, the General Assembly has exercised the power of converting the overture

into what we are accustomed to call an interim act ;* and it is acknowledged by all who understand our constitution, that, till the meeting of the next Assembly, such temporary enactments are binding upon all the members of the church. If presbyteries disapprove of them, they will express their disapprobation in the opinion which they transmit ; and the voice of their representatives in the next Assembly will prevent the re-enactment of the overture. The power, therefore, of passing interim acts cannot produce permanent evil ; it generally has the effect of rousing presbyteries to consider the overtures transmitted to them ; and, in many instances, the temporary regulations by which this power of the General Assembly had applied an immediate remedy to evils under which the church was suffering, have acquired the authority of standing laws, either by the tacit acquiescence of the church during a long course of years, or by the explicit approbation at length obtained from a majority of presbyteries.†

* Assemblies 1711, 1719, 1731, 1737, 1739, 1742, &c. &c.

† The act of Assembly 1711, concerning probationers, and settling ministers, never received the explicit approbation of the presbyteries of this church ; but being generally observed, it came, by long and uniform practice, to be considered as constitutional law. A more distinct and comprehensive act anent licensing probationers, was first introduced in the year 1740 ; and after undergoing various alterations in the Assembly, and being transmitted for many successive years, was, in consequence of the approbation of a majority of presbyteries, converted into a standing law by the Assembly 1782. The act respecting chapels of ease may be mentioned to the honour of the Church of Scotland, as an example of presbyteries being effectually roused by circumstances that require promptitude and vigour. The increasing wealth and population of various districts of Scotland having produced many applications for chapels of ease, there being no public law upon this novel subject, and different presbyteries having erect-

Executive
Power. 3. The General Assembly, from its first meeting under the authority of Parliament in the year 1560, assumed the direction of

ed chapels of ease upon plans widely dissimilar, and in some instances dangerous to the ecclesiastical and civil establishment, it was judged necessary to introduce into the Assembly 1796 an overture, founded upon the report of a committee, which had been appointed by the Assembly 1795 to consider the subject, "that presbyteries shall not pronounce a final judgment upon any petition for the erection of a chapel of ease, until they shall have received the special directions of the Assembly thereon." This overture having been adopted by the Assembly 1796, was transmitted to presbyteries for their opinion, and was at the same time enacted as an interim order. It was re-transmitted and re-enacted by the Assembly 1797; and a considerable majority of the presbyteries of the church having transmitted to the Assembly 1798 their opinions in favour of the overture, it was, by that Assembly, within two years after its being introduced, enacted into a standing law of the church. See Acts of Assembly 1798, session 6.

There occurred lately a stronger example of the sense of public duty correcting the tardiness incident to our mode of legislation. The General Assembly, from considering the circumstances of the case, had, in a few recent instances, given permission to a clergyman holding a professorship in an university, to hold, at the same time, a parochial charge in the country. In many parts of Scotland, apprehensions were entertained that this permission might introduce abuses hurtful to the interests of religion and literature; and the desire became very general that, by a law regularly enacted, an effectual check might be given to a practice which was considered by many as a most serious evil. In compliance with this desire, the General Assembly, May 22, 1816, appointed the committee of overtures "to prepare an overture for preventing the improper union of offices, to be reported to the Assembly." The overture prepared by the committee was produced and read, May 25, 1816; "and after a few amendments made upon it, the Assembly agree, without a vote, to transmit this overture to presbyteries for their opinion, and, in the mean time, they convert the same into an interim act." The committee appointed by Assembly 1817 to class returns to overtures, being able to report, "that a majority of presbyteries have given their consent to the overture relating to the union of offices;" the General Assembly, May 28, 1817, within twelve

the ecclesiastical business of the nation, which it managed, first by superintendents, and afterwards by the presbyteries which it erected in the different districts of the kingdom. In the Second Book of Discipline, which was agreed upon in the Assembly 1578, and inserted in the registers of Assembly 1581, it specified minutely the powers of presbyteries and synods; and nearly the same powers described in that book were confirmed by the act of Parliament 1592, c. 114, which has been properly termed the law of the land respecting our ecclesiastical constitution.* The powers thus committed to the inferior judicatories of the church of Scotland, are exercised by all of them in the ordinary discharge of their duty; and in the trial of candidates for the ministry, presbyteries are in a special manner the executive officers of the church. But the supreme executive power remains with the General Assembly, which having, in concurrence with the state, given at first to the inferior judicatories all the ecclesiastical powers which they possess, still, according to the powers which, in the Second Book of Discipline, it reserved to itself, “prescribes the rule how the other two kinds of assemblies should proceed in all things; and generally, concerning all weighty affairs that concern the weal and good order of the whole kirks of the realm, interpones authority thereto.” In the exercise of these powers, the General Assembly often issues peremptory mandates, summoning individuals and inferior courts to appear at its bar. It sends precise orders to particular judi-

months after its being introduced, “did enact and ordain that the said overture shall be held and acted upon, in all time coming, as a standing law of this church.”

* See Appendix, No. II.

catories, directing, assisting, or restraining them in the discharge of their functions ; and its superintending controlling authority maintains soundness of doctrine, checks irregularity, and enforces the observance of general laws throughout all the districts of the church. / As the decisions of the General Assembly, which constitute the common law of the church, may give a false interpretation of the statute-law, so the orders of the General Assembly may infringe the constitutional liberties of the separate judicatories. But when an opinion comes to prevail throughout the church that the General Assembly has acted improperly, the representatives sent by the presbyteries to future General Assemblies will give decisions of an opposite tendency ; and acts will be passed in the ordinary course of legislation, applying the proper remedy to the abuse of authority, and preventing the repetition of that abuse. The executive power may err in the church, as in the state ; and in both, the errors of the executive are corrected by the voice of the legislative.

“ The General Assembly,” says the Reverend Professor Finlayson, in the Heads of an Argument in support of the Overture respecting Chapels of Ease, with which he favoured the public in the year 1797, “ is the corner-stone of our ecclesiastical government. The powers which originally belonged to it have continued to be exerted occasionally through the whole period of its history. In the last century, its arm appears almost everywhere, directing the course of ecclesiastical procedure. And even in the present century, after a more settled state of things has rendered its interpositions less frequent, we see it still exerting the superintending and legislative authority

with which it is vested, whenever necessity or the general good requires. The existence of this authority is essential to the unity and vigour of our political system. Without it the church of Scotland would soon lose its glory, and separate into a number of petty independent jurisdictions, scattered over the districts of the country, unequal to their own defence, and insufficient for the purposes of an ecclesiastical establishment."

The settlements of vacant parishes have furnished the most important occasions for calling forth the executive power of the General Assembly. Ever since the establishment of the Church of Scotland, and particularly since patrons were restored to their ancient rights by the act 1712, presbyteries, even when they did not find any defect in the personal qualifications of the presentee, have often, from a supposed deficiency in his call, from regard to the wishes of the people, or from some local circumstances, delayed or even refused to settle him. When the matter is brought before the General Assembly, that supreme court, if satisfied that the conduct of the presbytery was not warranted by the laws of the church, interpones its authority, and enjoins them to proceed with all convenient speed, according to the rules of the church, to receive and admit the presentee minister of the vacant parish. If the reluctance discovered by the members of the presbytery appears to be such that they cannot safely be trusted with any discretionary powers, the General Assembly appoints the particular days of their meeting, in order to take the steps previous to the settlement, prescribes the whole course of their procedure, and constitutes them, in that particular case, the ministerial officers of the General Assem-

bly, who are not allowed to exercise their own judgment, but are required implicitly to obey the instructions given by their superiors. As the existence of the society depends upon the maintenance of this paramount authority, ministers have often been censured, and sometimes deposed, when setting their own judgment in opposition to that subordination which the constitution implies, and which their solemn promise at the time of their admission bound upon their conscience, they have finally refused to comply with the orders of the supreme executive power.

It may be impossible for a court which sits only once a-year for ten days, to decide all the questions that are brought before it ; and circumstances may occur in the intervals between General Assemblies, which call for the interposition of the supreme executive power of the church. The constitution of the church of Scotland, therefore, is completed by the commission of the General Assembly ; a court composed of the moderator and all the members, with the addition of one who is named by the moderator, which meets after the Assembly is dissolved, without the representation of the sovereign, and may be considered as a committee of the whole house. The General Assembly gives power to the said commissioners, or their quorum, which is declared to be thirty-one of their number, whereof twenty-one are always to be ministers, to meet within the Assembly-house, the first day after the dissolution of the Assembly, and thereafter the second Wednesday of August, third Wednesday of November, and first Wednesday of March, and oftener, when and where they shall think fit and convenient, with power to choose their own moderator ; and it empowers them finally to

determine, as they shall see cause, in every matter referred to them by the Assembly ; appointing, however, that no private processes be determined except at the four stated diets, and that what shall be determined at one diet of the commission, with relation to private causes, shall be unalterable by any other diet thereof, and shall continue in force till disapproved of by the General Assembly. As amongst the annual instructions given to the commissioners, they receive a general direction “ to advert to the interest of the church on every occasion, that the church, and present establishment thereof, do not suffer or sustain any prejudice which they can prevent, as they will be answerable,” they may find it expedient to meet oftener than at the four stated diets ; and a commission is legally constituted at any time when thirty-one of the commissioners, whereof twenty-one are ministers, finding themselves assembled in any place, proceed to choose a moderator. It has been usual for the moderator of the last Assembly, upon the few occasions when an extraordinary meeting of the commission has been held, to give public notice, at the desire of some members, of the day upon which it appears to them expedient to meet. But there is no reason to think that the moderator of the last Assembly, by withholding his compliance with that request, can restrain the commission from meeting, or that it would be incompetent for the commissioners to act, although circumstances should prevent a quorum of their number from assembling upon the very day which he had named. As the commission is a delegated court, the commissioners are accountable for all their actings to the next General Assembly, who may reverse their sentences, and find

those who concurred in them censurable, if it shall appear that they have exceeded their powers ; that is, have either meddled in any other matters than what were committed and referred to them, or acted contrary to the acts and constitution of the church, or to the prejudice thereof. But, within these limits, the commission is vested with the executive authority of the General Assembly ; and, by carrying into effect the sentences and judgments of the church, has, in many important cases, maintained that subordination of judicatories in which consists “ the unity and vigour of our political system.”

From this delineation of the constitution of the Church of Scotland, it appears that the distribution of power amongst the courts of which it is composed, is artificial and skilful. The judicial power ascends through all the courts, terminating in the General Assembly : The legislative both originates and ends there, with this restriction upon the exercise of it, that, without the concurrence of a majority of presbyteries, the General Assembly cannot enact any standing law : The supreme executive is lodged in the General Assembly, whose orders direct and control the inferior branches, until the whole body declare that they are illegal. In this distribution of power, there is sufficient energy and vigour for the dispatch of business ; there is a tardiness only with regard to that which of all things requires the most deliberation, the enactment of permanent laws ; and there is a provision made for the constitutional operation of that jealousy natural and proper in all republics, by which the rights and liberties of the inferior branches are defended against encroachment, and the General Assembly, however respectable by the

description of its members, and the various offices assigned to it, is effectually restrained from making innovations. This constitution gives the ministers of the Church of Scotland a voice in framing those regulations which are enacted to direct their conduct: It affords them such opportunities of displaying personal talents as are unknown under Episcopal government, and it has a tendency to form that manly, enlightened, and independent mind, which becomes all who are employed in the ministrations of the sacred office.

SECTION VI.

ON THE OBJECTS OF THE JUDICIAL POWER OF THE CHURCH.

AFTER the general account given in the preceding section of the manner in which power is distributed among the judicatories of the Church of Scotland, we shall attain a more intimate knowledge of the ecclesiastical constitution of this country, if we take a particular review of the objects in relation to which the judicial power is exercised.

When Protestants speak of the judicial power of the church, they ought never to forget, that the future and eternal punishments of sin are in the power of God, and that the judgments pronounced by the church can inflict only censures and external penalties. The Lord Jesus having required his disciples

to unite in a regular society, hath invested the rulers of that society with the office of admitting those whom they judge worthy, of admonishing and reproofing those who are admitted, and of suspending or excluding them from the privileges of the society. To the persons employed in this office he has left directions, for the observance of which they are accountable to him; and he will give his sanction to the acts which they perform agreeably to his directions. As he has not left them any promise of infallibility, they may unintentionally, or from corrupt motives, pronounce unjust sentences. But this inconvenience, which is incident to every exercise of power vested in the hands of men, does not affect the final salvation of his subjects: And even with regard to external privileges, it is not without remedy: For as “Christ, through the Spirit,” in the words of our Confession of Faith, “worketh when, and where, and how he pleaseth;” so Christians are justified, in cases of necessity, in resorting to an extraordinary method of enjoying that comfort and edification which the established order of the church was destined to convey to their souls.

The judicial power of the church, when exercised conformably to Protestant principles, in consistency with the sovereign authority of Christ, and the liberties of his disciples, may be considered as legitimately extending to the three following objects, gross immorality, heresy, and schism.

1. The constitution of the Christian society, the credit of religion, and the conduct of the apostles, teach us, that every flagrant transgression of the laws of Christ calls for the censures of the church: Yet there has been at different times a rigour in the discipline of the church

Gross Immorality.

which appears to us excessive, and which the temper of our times would not bear. The early Christians, exposed both to obloquy and to persecution, employed this discipline as a method of vindicating their society from the imputation of secret crimes, and of deterring the members from apostacy; and the circumstances which produced this zeal, although they cannot justify, may excuse the rigour. In the third century Novatian, going far beyond the severity of the primitive discipline, taught that every sin committed after baptism, and particularly the guilt which Christians contracted by joining in the worship of idols, excluded for ever from the communion of the church. In the fourth century the followers of Donatus, who mingled some private causes of separation with this general principle, refused to hold communion with any church which re-admitted those who had once committed a heinous sin, and regarded as invalid the baptism and ordination conferred by any society of Christians who had rendered themselves impure by such re-admission. Soon after the Reformation, the Anabaptists, reviving the principle of Novatian and Donatus, taught that the Christian society, whose character is holiness, ought to be inaccessible to sinners, and that any branch of that society, which permits a person who is not a saint to remain in its communion, ceases to be a part of the Church of Christ.

The principle of the Donatists and Anabaptists is incompatible with the present state of human nature, which does not admit of perfect virtue in any individual, far less in a large society; and it is contradicted by the exhortations and reproofs which the apostles addressed to the churches in their days, and by the confessions of sin which Christians are directed to

offer when they assemble themselves together. We look indeed for a time when the church, which Christ washed in his blood, shall be presented by him to his Father holy and without blemish ; and we believe that none shall be found members of the invisible church hereafter, who do not follow after holiness upon earth. But as the endeavours of the best are attended with much imperfection, and as the visible church, according to the description given in several of the parables of our Lord, is to continue till the end of the world a mixed society, we are fully aware that the discipline exercised by its rulers, unless it be relative to the present state of things, will convert one of the medicines which the Lord Jesus hath provided for the frailties and trespasses of his disciples, into an oppressive, unmeaning, and capricious tyranny.

In that temperate exercise of discipline which the general practice of the Church of Scotland recognises as congenial to her constitution, care is taken to avoid every appearance of intermeddling officiously with those matters that fall under the cognizance of the civil magistrate : no solicitude is ever discovered to engage in the investigation of secret wickedness ; counsel, private admonition, and reproof, are employed in their proper season ; and the public censures of the church are reserved for those scandalous sins which bring reproach upon religion, which give offence to the Christian society, and which cannot be overlooked without the danger of hardening the sinner, of emboldening others to follow his example, and of disturbing and grieving the minds of many worthy Christians. Even with regard to such sins, the temper of modern times has adopted the sentence

of the lesser rather than what is called the greater excommunication ; that is to say, we choose rather to suspend from the privileges of the church, and particularly from a participation of the Lord's supper, than, by a public sentence, to declare that the sinner is cut off from the communion of the church, and, according to the expression of the apostles, " delivered unto Satan." In England, the sentence of the greater excommunication is pronounced by the spiritual courts in the course of transacting the multiplicity of civil business which the constitution of that country commits to their judgment. In Scotland, it is appropriated to the sins of which the church, as a spiritual society, takes cognizance ; and it is rendered the more awful by being very unusual. When the offender, instead of being reformed by the sentence of the lesser excommunication, presumptuously persists in his former sin, we are directed to proceed, with the greatest possible solemnity, to the greater excommunication. Yet even this sentence is not understood to have any effect in dissolving the relations of civil life : it leaves access to various means of reformation ; and it is removed by the sentence of absolution, which the church is always ready to pronounce upon satisfying evidence of repentance.

In prescribing the manner of making profession of repentance, a prudent accommodation to circumstances may be expected from those who know the spirit of that evangelical precept, " Let us follow after the things which make for peace, and things wherewith one may edify another." In many situations more good arises from the dread of public rebuke, than from the rebuke itself ; and there is always the want of wisdom in defeating the end of church censures, by

requiring what we know will not be complied with. In this country especially, where the civil magistrate does not afford his aid in giving effect to excommunication, it becomes the office-bearers of the church to allow full time for the operation of all lenient methods of reclaiming offenders, before they proceed to that extremity which circumstances may sometimes render indispensable, but which it is desirable to avoid, for this reason, amongst many others, that whatever opinion may be entertained with regard to the sentence of excommunication, whether it is respected or despised, the church has not the power of doing any thing more.

Heresy. 2. Although protestant churches, renouncing every claim of infallibility, do not presume to impose upon the consciences of Christians any articles of faith which are not revealed in the word of God; yet they consider themselves as invested with the office of interpreting Scripture, of publishing the truths there taught, and of guarding the people against error; they think that they derive from the example and the directions of the apostles, a clear warrant to regard unsound doctrine as an object of the judicial power of the church; and they sometimes proceed to inflict the highest censures upon those who are guilty of heresy.

But there are two limitations of this exercise of ecclesiastical discipline, which, to the Church of Scotland, appear to be prescribed by protestant principles.

First, Heresy, when considered as a legitimate object of church-censure, denotes, not the entertainment of a false opinion in the mind, but the publication of that opinion by discourse or by writing.

Those who are admitted to join in communion with the church, profess, by partaking of the ordinances of religion as administered by her office-bearers, that they approve of the doctrine which she holds. We consider this profession as a sufficient evidence of their faith; and we think that the church goes beyond her province, when, by collecting suspicious circumstances, she attempts to expiscate their sentiments. Hence we condemn those inquisitorial proceedings, by which the formidable tribunals erected in the Church of Rome presumed to judge the secrets of men's hearts. Disclaiming a tyranny which invades the prerogative of the Almighty, and disturbs the tranquillity with which every man has a right to enjoy his own opinions, we consider those only as liable to the charge of heresy, whose zeal in the propagation of opinions contrary to the doctrine of the church, has a tendency to lead others into what she accounts error, and to excite those animosities and altercations which have ever attended the general diffusion of controversial discussions in theology. By judging and censuring such persons, the church gives notice that she disapproves of their doctrine, and, in execution of the office committed to her, warns Christians of the danger of being led aside from the truth, and holds forth to their attention the faith once delivered to the saints.

Secondly, Heresy, when considered as a legitimate object of church-censure, must respect some fundamental and pernicious error. The Arminians appear to us to sacrifice that unity of faith which we consider as essential to the Church of Christ, when, framing their creeds in the most ambiguous terms, they represent fraternal charity as a sufficient bond

of union amidst all possible diversity of theological sentiments. But, on the other hand, we blame the endless multiplication of heresies in the church of Rome, as an unnecessary and unjustifiable entanglement of the disciples of Christ: We think that it is possible to state, in no great compass, the errors which are fundamental, and the truths in which all who hold one faith ought to be united; and we are unwilling to charge with heresy those who readily subscribe to the great doctrines which are plainly taught in Scripture, although they do not admit the justness of all the explications, distinctions, and reasonings which have been employed in the statement of those doctrines. There is great respect due to the diversities of understanding and of education; to the freedom which every man of research claims to a certain degree as his right; even to the wanderings of a speculative mind: and the divine simplicity, with which the truths characteristical of the gospel are there proposed, seems intended to leave room for those who "judge of themselves what is right," to differ in their mode of conceiving the truths, while they unite with cordiality in defending them.

Schism. 3. That power of making enactments, by its own authority, in matters of order, and in circumstances respecting the conduct of divine worship, which is conveyed to the church by the practice and the directions of the apostles, ought always to be exercised in a manner conformable to the character of the Christian religion. A simplicity of external observances is dictated by this luminous principle,* "The kingdom of God is not meat and drink, but

* Romans xiv. 17.

righteousness, and peace, and joy in the Holy Ghost." A tender consideration of the infirmities, the prejudices, and scruples of our brethren, a kindly solicitude to enlighten the consciences of the weak, and a readiness to grant every indulgence and concession not inconsistent with order,—all this is a branch of that gentle, condescending, accommodating spirit which the apostles learnt from their Master, and which he has prescribed for the government of their successors till the end of the world, in these gracious words: "Whosoever shall offend one of these little ones that believe in me, it were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea. Take heed, that ye despise not one of these little ones; for I say unto you, that in heaven their angels do always behold the face of my Father which is in heaven."

The same attention is not due to those who revile both the regulations enacted by the church, and the authority from which they proceed. It is impossible to read Neale's History of the Puritans, without inferring from the account given by that able and zealous apologist, that among the puritans of former times, there were many who covered a factious spirit under the pretext of a scrupulous conscience. Such men "know not what manner of spirit they are of." They have no title to complain if the church employs her censures in counteracting the disorder and division which they wish to propagate; and she is commanded to warn them of those judgments which shall hereafter be inflicted upon them that are contentious.

But those who refuse compliance with ecclesiastical regulations seldom wait till, by a judicial sentence, they are cast out of the church; they choose rather

to withdraw from her communion ; and that separation, which, by those whom they leave, is generally branded with the name of Schism, they defend as a matter of conscience. It does not become a Protestant church to regard this defence as an inadmissible plea, which may be rejected without examination. For the first Protestants separated from the church of Rome, because she required the belief of doctrines which they proved from Scripture to be false, and imposed the worship of images, the adoration of the host, prayers to saints, and many other observances which the Scripture declares to be idolatrous. To those who entertained such apprehensions of the church of Rome, separation from her was a duty which they owed to their Master in heaven ; and in as far as any Protestant church follows the example of the church of Rome, by imposing unlawful terms of communion, in so far does her conduct render separation from her lawful. The power implied in church-government would degenerate into an oppressive humiliating tyranny, and might lead Christians to act in contradiction to the light of their conscience, if in every possible case they were obliged to yield obedience. The remedy is found in the right of forming separate congregations ; and the remedy is complete, because every person, who accounts it sinful for him to remain in the communion of the church, is emancipated as soon as he withdraws.

The name of schism, therefore, is reserved for separation proceeding upon some frivolous reason, which is often merely a pretext for gratifying the passions of ambition, avarice, resentment, and envy. When attachment to particular teachers forms Christians into parties, they fall under the censure which

Paul addressed to the Corinthians. "I hear that there are contentions and schisms among you. Every one of you saith, I am of Paul, and I of Apollos, and I of Cephas, and I of Christ. Is Christ divided?"

When the separation proceeds upon the idea of forming a more perfect establishment, it is seldom duly considered that no human institution can be faultless, and that the evils which necessarily arise from schism far counterbalance any advantages which may be expected from improvements not essential to the constitution of the church. When Christians separate because the discipline of the church does not appear to them sufficiently strict, they act as if the comfort and benefit derived from the ordinances of religion depended upon the character of those who partake with us, or as if the purity which the Anabaptists require in the church of Christ could be attained on this side of the grave. And when their only complaint is a dissatisfaction with some regulations of the church concerning matters acknowledged to be in themselves indifferent, they forget that it is impossible to frame any regulations of such matters which will meet the prejudices and opinions of all; that obedience to competent authority, enjoining, for the sake of order, what is not unlawful, does not imply a sacrifice of Christian liberty; and that the new congregation cannot exist and attain the purposes of its institution, without some exercise of the same authority.

Whatever be the nature of the frivolous or corrupt motives which give to separation the character of schism, the conduct of all who deserve the name of schismatics is blameworthy. It does not correspond to the descriptions of the catholic church, which

is said in Scripture to be “one body,” in which there ought “to be no schism;” it is opposite to the exhortations and entreaties in which the apostles recommend unity and peace; and in all ages it has appeared to the church deserving of the same reprehension and censure which the apostles directed against a similar spirit in their days.

While the Church of Scotland, by the simplicity of her worship, makes less demand upon the obedience of those who belong to her communion than almost any other church, she does not fail to warn them of the evil of schism, and to employ every Christian method of preserving them from a situation in which they naturally imbibe that rancour towards all who differ from them, that attention to things of inferior importance, and that self-sufficiency or spiritual pride, which are the general characters of schismatics. But when, notwithstanding the united influence of prudence, condescension, and authority, separate congregations are formed within her bounds, she does not forget that her judicial power with regard to them comes to an end: She is far from attaching to all who have been baptized and educated in those congregations the same blame which belongs to the authors of the schism; and she never returns that bitterness and abuse, which, so long as they retain the worst features of schismatics, they are, upon all occasions, ready to direct against her.

With respect to the churches of different countries, there can be no exercise of judicial power, and there is no other judgment recognised by the spirit of the gospel, but the judgment of charity. Every national church is a whole society within itself, independent of every other, and invested with a full right to regu-

late its own concerns. But amongst all of them there is a bond of union formed by their subjection to the same Lord, and their profession of the same faith; and upon this union is founded that spirit of love which ought to pervade all the churches of Christ, that brotherly correspondence by which they may often promote the comfort and edification of one another, and that “holy fellowship and communion of saints in the worship of God, which, as God offereth opportunity, is to be extended unto all those, who in every place call upon the name of the Lord Jesus.”* This communion certainly supposes a consent in the great articles of the Christian faith; but it does not imply, either a perfect agreement as to every disputable point of doctrine, or an uniformity of rites and ceremonies. It is a just and enlarged idea of the venerable Irenæus, that the diversity of external observances amongst those who hold the same great doctrines illustrates and confirms the unity of faith:† And all, who understand the true nature of that great society which is constituted by the followers of Jesus in every land, have learnt not to judge their brethren in respect of days, and meats, and drinks, points of doubtful disputation, and matters of order; but amidst those differences which are unavoidable in the present state of human nature, they are “perfectly joined to-

* See Confession of Faith, chapter 26.

† In plurimis provinciis, multa, pro locorum et nominum diversitate, variantur, nec tamen propter hoc ab Ecclesiæ Catholicæ pace atque unitate aliquando discessum est. Firmilianus apud Cyprianum, epist. 75. § 5. Οἱ μὲν γὰρ οἰοῦντι μίαν ἡμετέραν δεῖν αὐτῆς νηστεύειν, οἱ δὲ δύο, οἱ δὲ καὶ πλείονας, — πάντες ἔτι ἐρηνύσαν· ἡ διαφορία τῆς νηστείας τὴν ὁμονοίαν τῆς πίστεως συνίστησι. Irenæus apud Eusebium, lib. 5. cap. 24.

gether in the same mind, and in the same judgment ;” and “ speaking the truth in love,” they “ endeavour to keep the unity of the Spirit in the bond of peace.”

SECTION VII.

ON THE PROVISION MADE BY THE STATE FOR THE CHURCH OF SCOTLAND.

BEFORE Christianity enjoyed the countenance of the State, the funds of the church consisted of offerings which arose purely from the piety and zeal of the first Christians ; and out of the amount of these offerings in any district, the ministers of religion in that district were maintained, the expenses necessarily attending the public assemblies of the Christians were defrayed, and a portion was always set apart for supplying the necessities of the poor.

After Christianity became the established religion of the Roman empire, piety, or vanity, or superstition, enriched the church with numberless donations and endowments ; and the whole system of popery was calculated to bring into the hands of the clergy, and to detain there for ever, a very large portion of the wealth of every Christian country. In those states of Europe which separated from the communion of the church of Rome, causes which enter deeply into the history of the Reformation diverted into other channels part of the wealth of the church ; and as there was much variety in the circumstances and the measure of that diversion, the provision at present made for the Chris-

tian church in the reformed states of Europe does not always correspond to the finances of the different countries. The two established churches of Britain differ widely from one another, both in the proportion of the general wealth of the country allotted for their support, and also in the manner of collecting and distributing that proportion. The revenue of the Church of England forms an interesting branch of the political economy of that country: And a delineation of the constitution of the Church of Scotland, necessarily comprehends some account of the provision made for the existence, the independence, and creditable support of that form of church-government which, agreeably to the statutes passed at the Revolution, and to the treaty of union, every succeeding prince, by his coronation-oath, binds himself to maintain and preserve.

Provision for the
Church as a So-
ciety.

The Church of Scotland being the organ by which the state communicates with the people of this country in matters respecting religion, the state has, in different ways, provided for the respectable appearance of the church as a society. The church receives annually from the Exchequer of Scotland the sum of L.1000.* Out of this sum are paid L.100 to the moderator of the Assembly for the expenses incident to his office; the salaries of the procurator and agent of the church, the law-officers, to whose advice both the supreme court in the course of its deliberations, and presbyteries in the conduct of their business, have often occasion to resort; the salaries of two clerks, whose attendance upon the General Assembly ensures the orderly transaction of business, and gives dignity to the supreme

* Note L.

court ; and the salaries of the door-keepers and inferior officers, who execute the summonses and orders of the General Assembly. The surplus which remains after these payments, is generally applied in assisting clergymen to carry on those processes, which they are often obliged to undertake, in defence of the rights of the church. As the person of the Sovereign is represented in the General Assembly, there is issued out of the same fund from which the annual revenue of the church is taken, the sum of L.2000, in order to defray the expenses incident to that dignified station : And the Established Church is honoured with a farther expression of royal favour, in the emoluments annexed to the offices of his Majesty's chaplains for Scotland, and the Deans of the Chapel-royal, which are always conferred upon ministers of the Church of Scotland.

—for places of public worship. As Christians are commanded “not to forsake the assembling of themselves together,” the idea of an established church implies a legal provision for the erection and reparation of places set apart for that purpose, where the members of the established church may conveniently attend public worship. Most of the old churches were built in the times of popery ; and the state of things is now so completely changed, that many points of controversy often occur upon this subject. But, by a train of decisions interpreting and applying the law, it is now clearly understood, that neither the size of the fabric, nor the money to be laid out in building or repairing it, are left to the caprice of individuals, without legal redress for those who conceive that they are aggrieved ; and if the land-holders and the other inhabitants of a parish cannot agree, the courts of law determine

the measure of accommodation which the circumstances of the parish require, the distribution of that accommodation, and the allotment of the expense amongst the different orders of the inhabitants.

—for the maintenance of the Clergy.

As the church of Christ includes, by the constitution which it derived from its divine founder, an order of men who are supposed to devote their time and their study to the discharge of the duties of the pastoral office, and who have both a natural and a divine right to maintenance from those for whose good they labour, a very important part of the provision made by the laws of this country for the ecclesiastical constitution of Scotland, respects the stipends and other emoluments enjoyed by the ministers of the established church.

When the law of Moses separated the children of Levi to do the service of the tabernacle, it gave them no inheritance in the land of Israel : but, besides the first fruits and certain portions of the offerings, it gave them all the tenth in Israel, which they received as their inheritance. It was an opinion held, and zealously defended for many ages, that the tithes, or, as we call them in Scotland, the teinds of the produce of the ground, and of what is acquired by personal industry, belong, of divine right, to the Christian church. The opinion is now so generally exploded, that it is unnecessary to state the arguments upon either side. But as all the countries in Europe, where Christianity has been established, have recognised the authority of that ordinance of the Lord declared by his apostle, “that they which preach the Gospel, should live of the Gospel;”* so their respect

* 1 Cor. ix. 14.

for the Mosaic institution produced, in the original form of their religious establishment, such an imitation of the provision made for the sons of Levi, that the tithes came to be considered, by law and practice, although not of divine right, as the patrimony of the church. In the countries which acknowledged the dominion of the pope, the tithes, although seldom completely appropriated to the maintenance of the parochial clergy, were always destined to some religious or charitable purposes. At the Reformation, many of those purposes were declared superstitious; the monasteries and cathedral churches of Scotland, which had held a great part of the teinds of the kingdom, were demolished; and their revenues were either rapaciously seized by the nobles who had conducted the Reformation, or were disposed of by the sovereign in grants of various forms, and were sometimes converted into temporal lordships. Individuals of many different descriptions became, in this way, titulars of teinds, that is, were invested with that right of drawing the tithes which had originally belonged to a monastery, to a cathedral church, or to some ecclesiastical person. The remonstrances of the reformed clergy upon this subject met with little attention; and, notwithstanding the zeal for the destruction of popery, which at that time pervaded all ranks and orders of the state, the men whose discourses and ministrations amongst the people had been the chief instrument of accomplishing the change, and whose plan of ecclesiastical discipline was cordially adopted by the state, received but a scanty provision. Even then, however, it was understood that the teinds are subject to a perpetual indefinite burden in favour of the parochial clergy. Various commissions, or com-

mittees of the Scots parliament, appointed in the course of the seventeenth century for this special purpose, granted relief to ministers out of the teinds, according to circumstances: and when the seat of parliament was removed by the treaty of Union from Edinburgh, it was judged expedient to constitute the lords of council and session an established and fixed judicature, to determine in all affairs and causes which had formerly been referred to the cognizance of those commissions.*

In order to understand the present system for providing the ministers of the Church of Scotland with an adequate stipend, it is necessary to take into view the three following circumstances.

Titulars of *First*, The burden of this provision
Teinds. falls not upon the landholders, but upon the titulars of teinds. In numberless cases the landholder is not the titular of his own teinds; but while the stock is his, the teind of the stock belongs to the crown, or, in consequence of grants from the crown, to some individual, or some corporation. Sometimes the teind is drawn in kind by the titular; sometimes it is held in lease by the landholder, at such yearly rent, and for such a number of years, as had been agreed upon at the commencement of the lease; sometimes it is ascertained for all time coming at a fixed value, which the landholder pays annually. The minister's stipend, being in all cases payable, not out of the stock, but out of the teind, is only a part of what is due from the landholder to the titular. Any increase of stipend is a diminution of what the titular formerly received, but is no addition to the burden to

* Appendix, No. VI.

which the landholder was previously subject ; and it is not a matter of importance to him, whether he pays what is due for his teinds to the titular, or to the parochial minister.

Valuations and sales of Teinds. *Secondly*, The landholders of Scotland are placed by law in a more favourable situation with respect to the payment of their tithes, than the subjects of any other Christian state. When teinds remain with the crown, or when they have been granted for the support of ministers, colleges, or hospitals, they cannot be sold. But, with these exceptions, a landholder who is not the titular of his own teinds, is entitled to prosecute before the Court of Session for a sale of them ; and, upon such process, the titular is obliged to sell them to him at the moderate price of nine years purchase of the valued teind-duty. By this sale, the stock and teind are united in the same person, or the landholder becomes titular of his teinds ; and, in this new capacity, he is subject to the burden of maintaining the parochial minister, which did not affect him in his former capacity of landholder. When the teinds of his land are held by persons against whom he cannot bring a process of sale, or when he does not choose to purchase, he may value them, that is, he may lead a proof before the Court of Session, of their present value, and the valuation once made by authority of the court, according to established rules and practice, ascertains the quantity of victual, or the sum of money, in the name of teind, payable out of his lands in all time coming. This privilege, which the landholders of Scotland have enjoyed since the days of Charles I. removes the great objection commonly urged against tithes. In other countries, after the landholder has

improved his lands, a person who had no share in the expense, the labour, or the risk, comes in to share with him the advanced rent. But in Scotland, after the landholder has valued his teinds, however much the rent of his lands may rise by the improvements of agriculture, or the extension of manufactures and commerce, the increase is entirely his own, because the teinds never go beyond the rate at which the valuation had fixed them.

Augmentations of Stipends. Without successive augmentations of stipends, the ministers of the established church would not remain in the same relative situation as when presbyterian government was established at the Revolution. Since that time, there has been a continued increase of the revenue of the landholder, the wages of the labourer, and the earnings of the manufacturer. But if, while all other orders of men are getting forward in the general progress of the country, the stipends of the ministers of the established church were to be stationary, the accumulation of national wealth, by sinking those who minister at the altar into abject poverty, would render them contemptible, and the church would soon be supplied only out of the lowest orders of the people. It is a branch of political wisdom to save the established clergy from a degradation, which, by allying them to those who have nothing to lose, might render them dangerous to the state, or at least indifferent as to its welfare and stability. If the landholders of Scotland, in the valuations and sales of teinds, have derived much benefit from the fixed judicature appointed at the Union, it is reasonable that ministers should have access, by the sentences of that court, to all the funds which the constitution has

destined for their support ; and if those legal funds should prove inadequate, the necessity of the case will call for the interposition of the legislature to make such further provision for the ministers of the established church, as may place them upon the respectable footing which, in a wealthy flourishing country, that name is supposed to imply.

The legislature has proceeded upon the liberal views now stated. For the act February 21, 1707,* which appointed the Lords of Council and Session to determine in all valuations and sales of teinds, authorized them to grant augmentations of ministers' stipends. The act June 30, 1808,† defined and regulated their power in augmenting and modifying stipends ; and as it empowered and required them to establish rules and regulations for abridging the forms and expenses of citations of heritors and others, and for ascertaining the facts and circumstances of the case, their Lordships did, by an act of sederunt, July 5, 1809,‡ establish regulations for executing, with as much expedition and as little expense as possible, the business committed to them by the acts of Parliament 1707 and 1808.

But even after every facility was thus afforded in giving a minister access to the funds destined for his support, it is manifest that where the teinds were exhausted, that is, where he already drew all that by law they could be called upon to furnish, the powers of the commissioners of teinds necessarily failed. Nor was this an imaginary evil ; for there were above fifty parishes in Scotland, in which the provision for the

* Appendix, No. VI.

† Appendix, No. VII.

‡ Appendix, No. VIII.

ministers was very small, yet, from circumstances constituting a legal exemption of some of the teinds, and from the low valuation of the rest, no redress could be had. To remedy this very hard situation, upon the motion of the late Spencer Perceval, Esq. a virtuous and lamented statesman, an act was passed, June 15, 1810, for augmenting parochial stipends in certain cases in Scotland. The first paragraph of this act, which explains the liberal views of the legislature, and an abstract of the subsequent provisions for carrying their intentions into effect, will be found in the Appendix.*

From the act 1810, it may be presumed, that no stipend in the established church is at present below L.150, an income which, although far inferior to the emoluments of those who succeed in other liberal professions, places all the ministers of the established church above absolute want; and by giving many of them a considerable addition to their former stipends, raises them from the extreme penury under which they had laboured.† By the act 1808, a point, concerning which doubts were formerly entertained, is now clearly established, that, in all parishes where there are legal funds, it is competent for the Court of Teinds to grant successive augmentations; and some security is given to the ministers of those parishes, that their stipends shall keep pace with the progress of the country, by their being allowed, within twenty years after having received one augmentation under this act, to state to the court appointed to hear them, the circumstances which render it expedient that they should receive another.

* Appendix, No. IX.

† Note L.

When the commissioners of teinds, upon hearing the circumstances of the case, determine to augment a stipend, they grant first a decret of modification, fixing the quantity and the description of the stipend, which, except in very particular circumstances, must be wholly modified in grain or victual; and next a decret of locality, apportioning the stipend among those who are liable in payment. The title to the augmented stipend commences from the date of the summons with which the process of augmentation had commenced; and the complete right conveyed by the decreets of modification and locality, is effectually protected against the operation of injustice or bad humour, by various regulations of law, which render the eviction of all that is due to the minister easy and expeditious.

The law of Scotland provides the minister of every country parish with a dwelling-house, called a manse, a garden, a glebe, of not less than four acres of arable land, designed out of lands in the parish near the manse, and with grass, over and above the glebe, for one horse and two cows; and with the out-houses necessary for the management of his small farm. As the Act, James VI. parl. 3, c. 48, declares, that the manse and glebe shall be marked and designed by the archbishop, bishop, superintendant, or commissioner of each diocese or province, upon whose testimonial being presented by the minister, the Lords of Council and Session are instructed to direct letters, charging the former occupiers to remove, and entering the minister to possession; as the Act, Charles II. parl. 1, sess. 3, c. 21, ordains, that the heritors of the parish, at the sight of the bishop of the diocese, or such minis-

Glebe and
Manse.

ters as he shall appoint, with two or three of the most knowing and discreet men of the parish, build competent manses to the ministers; and as, by the settlement of presbyterian government in Scotland, the presbytery has come in place of the bishop, all applications concerning manses and glebes are made, in the first instance, to the presbytery of the bounds. After taking the regular steps suitable to the nature of the business, which, as a civil court specially constituted for that purpose, they are called to discuss, the presbytery pronounce a decret; and their sentence, unless brought by a bill of suspension before the Court of Session, is binding upon all concerned.

Communion-
Elements.

In primitive times, the bread and wine used in the Lord's Supper were brought by the faithful, with their other offerings. After Christianity assumed a more regular form, the bishop applied part of the patrimony of the church, which was placed under his management, in providing all things necessary for public worship. In the Church of England, it is ordained, that the bread and wine for the communion shall be provided by the curate and church-wardens at the charges of the parish. In Scotland, it is understood, that the same fund out of which stipends are allotted to the clergy, is subject to the burden of furnishing communion-elements. The donations of pious persons have, in some parishes, allocated a particular sum for that purpose. But when a minister represents to the Court of Session, that there is no such allocation, or that the sum allocated is not sufficient, and when the court finds that the teinds are not exhausted, it is accustomed to grant out of that fund, in proportion to the extent of the parish, and the supposed number

of communicants, such a sum, under the name of communion-elements, as may ensure to the parish the stated celebration of the Lord's Supper, by indemnifying the minister for the bread and wine that are used, and for the extraordinary domestic expenses which arise from the mode of administering that ordinance in this country.

The Ann. By that provision for the ministers of the Established Church which has now been explained, the law of Scotland means to preserve them in a decent independence, to prevent them from being entangled in disputes with their parishioners, or in a multiplicity of secular business about the mode of collecting their stipend, and to give them that security and quiet which may be supposed most favourable to the successful discharge of the duties of their sacred office. And the law, considering them as stipendiaries, who have nothing more than is necessary for their maintenance, and who may be presumed unable to lay up any money for the extraordinary expense of sickness and death, humanely extends its attention beyond the life of a minister, by giving to his family what, in our law, is called the Ann.* If he had survived the 15th May, he was entitled, in his own right, to the half of the crop, then supposed to be sown; and his widow, his children, or his executors, are entitled, in right of the Ann, to the other half. If he had survived the 29th of September, he was entitled, in his own right, to the whole of the crop, then supposed to be reaped; and his widow, his children, or his executors, are entitled, in right of the Ann, to the half of the next crop. The half-

* See Appendix, No. X.

year's stipend that becomes due while the steps for the induction of a new minister are going forward, is thus arrested by law, and given, in the time of their deepest affliction, to the representatives of his predecessor.

The humane provision of law which gives the widows, children, and executors of ministers a right to the Ann, has been followed out by the Widows' Fund. This wise and salutary scheme, which originated in the accurate calculations of the late Dr. Webster, received the sanction of Parliament in 1744, was improved and extended by two subsequent Acts of Parliament, and was established on its present footing by an Act made in 1814, for which the Church of Scotland will always with pleasure embrace every opportunity of acknowledging that it is indebted to the benevolent views, and the generous, able, persevering exertions of the Reverend Dr. Nicoll, minister of Strathmartin, in the presbytery of Dundee.

By former Acts, every minister possessed of a benefice in the Church of Scotland, and every person possessed of an office in any of the Universities of St. Andrews, Glasgow, Edinburgh, and Aberdeen, was subject to one or other of the annual rates therein specified : the widow was entitled to an annuity corresponding to the rate he had chosen ; and his children, if he left no widow, were entitled to ten years of the annuity which would have been payable to his widow. Under the able and vigilant management of Dr. Webster, while he lived, of his worthy successor, the Rev. Sir Henry Moncreiff Wellwood, Baronet, and of the trustees of the fund appointed by Parliament, after payment of the annual expenses of management of the annuities to widows, and the

provisions to children, there has been accumulated the capital of L.100,000, which was lent out on proper security. Parliament had declared, that, after the capital attained that amount, all further accumulation should cease; and contributors being called upon, according to the directions of parliament, to give an opinion as to the future disposal of the surplus revenue, had determined, that it should be applied solely to the benefit of the widows of contributors.

But the annuities and provisions, fixed by former Acts of Parliament, had, from the increased expense of living, and the decrease in the value of money, become wholly inadequate for the purpose of these Acts. To remedy this great and increasing evil, recourse was again had to the authority of Parliament; and by the Act 1814, the following important improvements upon the fund, applicable to payment of annuities and provisions, received the sanction of Parliament.

1. An addition of twenty pounds per cent. on the present annual rates of contribution.*

2. A voluntary subscription among the contributors.†

3. A contribution of ten pounds payable by every person admitted for the first time to a benefice in the church, or to an office in any of the Universities in Scotland.‡

* The four annual rates, to one of which every Minister and Professor is now subject, are L.3, 3s., L.4, 14s. 6d. L.6, 6s., L.7, 17s. 6d.

† The Trustees report to Assembly 1816, that the total amount of this subscription, in aid of the new fund, is L.8760, 1s.

‡ The sum of L.10, the contribution of which, by every succeeding intrant, has now become a matter of legal obligation, is

4. A grant of the bishops' rents in Scotland, the neat amount of which is reported by the trustees to Assembly 1816, as being L.2076, 9s. 2d.

5. A grant of the vacant stipend arising in any period subsequent to crop 1813.*

6. Permission to apply to the purposes of this Act, the unappropriated balance which had accumulated in the hands of the trustees, after the capital attained the prescribed amount, including such voluntary donations as had been added thereto.†

These various improvements upon the fund committed to their management, will enable the trustees to follow the directions of Parliament, by increasing, after six years, at certain intervals specified in the Act 1814, the annuities of widows, and the provisions of orphan families. "It being the true meaning and intent of this Act, that there shall always be attached to the capital stock such an increasing sum or revenue, as may admit, from time to time, of an advance in the annuities of the widows and orphan families of contributors in some degree corresponding to what may be the expense of living, and to the consequent exigencies of their situation."

It is distressing to persons of a scanty income to be obliged to lay up yearly, even so small a sum as any of the increased rates. But in return for this

nearly the average of the voluntary subscription of contributors in aid of the new fund.

* The vacant stipend, which, by the law of Scotland, the patron was bound to apply, at sight of the heritors, to pious purposes within the parish, is, by the Act 1814, given, when it does arise, to the trustees, to be applied to the purposes of the Act.

† The Trustees report to Assembly 1816, that the amount of the accumulating fund, as ascertained by a minute of their Committee, is L.5895, 5s.

hardship, the widows of contributors, by the successive additions to their annuities, will henceforth be preserved from that wretchedness and dependence, to which, before the institution of this fund, they were often reduced.



APPENDIX.

No. I.

Act 7th of the 1st Parliament of James VI. holden at Edinburgh, Dec. 1567, by James Earl of Murray, Regent.

Admission of Ministers of Laik Patronages.

“ It is statute and ordained be our Soveraine Lord, with advise of his dearest Regent and Three Estaitis of this present Parliament, That the examination and admission of ministers within this realme be only in the power of the Kirk, now openlie and publickly profest within the samin: The presentation of laik patronages alwaies reserved to the just and auncient patrones: And that the patroun present ane qualified persoun, within sex months, (after it may come to his knowledge of the decease of him quha bruiked the benefice before), to the superintendant of thay partis quhair the benefice lyes, or uthers havand commission of the Kirk to that effect, utherwaies the Kirk to have power to dispone the samin to ane qualified person for that time.

“ Providing, That in caise the patron present ane person qualified to his understanding, and failing of ane, aneuther within the said sex months, and the superin-

tendant or commissioner of the Kirk refusis to receive and admit the person presented be the patron, as said is, it sall be lesum to the patron to appeale to the superintendent and ministers of that province quhair the benefice lyis, and desire the person presented to be admitted, quhilk gif they refuse, to appeale to the General Assemblie of this haill realme, be quhome the cause beand decyded, sall take end as they decerne and declair.

No. II.

1592, c. 114. *being the first Act of the 12th Parliament of James VI. holden at Edinburgh June 1592.*

Ratification of the Libertie of the Trew Kirk ; of General and Synodal Assemblies ; of Presbyteries ; of Discipline. All laws of Idolatrie ar abrogat. Of Presentation to Benefices.

“OUR SOVERAINE Lord, and Estaites of this present Parliament, following the loyabil and gude example of their predecessours, hes ratified and appreeved, and, be the tenore of this present act, ratifies and appreis all liberties, privileges, immunities, and freedoms quhatsumever, given and granted be his Hieness, his Regents in his name, or onie of his predecessours, to the trew and halie Kirk presently established within this realme, and declared in the first acte of his Hieness’ Parliament, October 20, 1579 : And all and quhatsumever acts of parliament and statutes made of before be his Hieness and his Regentes, anent the libertie and freedome of the said Kirk ; and specially the first act of the parliament halden at Edinburgh, October 24, 1581, with the haill particular acts there mentioned, quhilk sall be als sufficient as gif the samin were here expressed, and all uther actes of parliament made sensyne in favour of the

trew Kirk: And sicklike, ratifies and apprevis the General Assemblies appoynted be the said Kirk; and declares, that it shall be lauchful to the Kirk and ministers, everie zeir at the least, and oftener, *pro re natá*, as occasion and necessitie sall require, to hald and keepe General Assemblies: Providing, that the King's Majestie, or his Commissioners with them, to be appointed be his Hienesse, be present at ilk General Assemblie before the dissolving thereof, nominate and appoynt time and place quhen and quhair the next General Assemblie sall be halden; and in case naither his Majestie nor his said Commissioners beis present for the time in that town quhair the said General Assemblie beis halden, then and in that case it sall be lesum to the said General Assemblie, be themselves, to nominate and appoynt time and place quhair the next General Assemblie of the Kirk sall be keiped and halden, as they have been in use to do thir times bypast. And als ratifies and appreevis the Synodal and Provincial Assemblies, to be halden be the said Kirk and ministers twise ilk zeir, as they have bene, and are presently in use to do, within every province of this realme: And ratifies and appreevis Presbyteries and Particular Sessions appoynted be the said Kirk, with the haill jurisdiction and discipline of the same Kirk, aggried upon be his Majestie, in conference had be his Hienesse with certain of the ministeres convened to that effect; of the whilk artickles the tenour followes.—Maters to be intreated in Provincial Assemblies: Thir Assemblies are constituted for weichtie matters, necessar to be intreated be mutual consent and assistance of brethren within the province, as need requiris. This Assembly hes power to handle, ordour, and redresse all things omitted or done amiss in the particular Assemblies. It hes power to depose the office-bearers of that province, for gude and just cause, deserving deprivation. And generally, thir Assemblies hes the haill power of the particular elderships quhair of they ar collected.—Maters to be intreated in the Presbyteries: The power of the Presbyteries is to give dili-

gent laboures in the boundes committed to their charge, that the kirks be kept in gude ordour ; to enquire diligentlie of naughtie and ungodlie persons ; and to travel to bring them in the way againe, be admonition, or threatenings of God's judgments or be correction. It appertaines to the elderschippe, to take heed that the Word of God be purelie preached within their boundes, the sacraments richtlie ministred, the discipline entertained, and ecclesiastical guddes uncorruptlie distributed. It belongs to this kind of assemblies, to cause the ordinances maid be the Assemblies, Provincialles, Nationalles, and Generalles, and be kepted and put in execution, to make constitutions quhilk concerns το πρεπον in the Kirk, for decent ordour in the particular kirk quhair they governe ; providing that they alter na rules maid be the Provincial or General Assemblies, and that they make the Provincial Assemblies foresaid privie of the rules that they sall make ; and to abolish constituciones tending to the hurt of the same. It hes power to excommunicate the obstinate, formal process being lede, and due interval of times observed.—Anent particular kirks, gif they be lauchfully ruled be sufficient ministerie and session, they have power and jurisdiction in their own congregation in matters ecclesiastical. And decernis and declaris the saides Assemblies, Presbyteries, and Sessiounes, jurisdiction and discipline thereof aforesaid, to be in all times cumming maist just, gude, and godlie in the selfe, notwithstanding of quhatsumever statutes, acts, canone, civill, or municipal lawes, made in the contrare. To the quhilks and everie ane of them thir presentes sall make expresse derogation.”—Follows a repeal of “divers acts of parliament maid in favour of the Papistical Kirke, tending to the prejudice of the libertie of the trew Kirk of God, presently professed within this realme, jurisdiction and discipline thereof.”—“Item, the Kingis Majestie, and Estaites foresaids, declaris, That the 129th acte of the parliament halden at Edinburgh, May 22, 1584, sall na wise be prejudiciall

nor derogate onie thing to the privilege that God has given to the spirituall office-bearers in the Kirk, concerning heads of religion, maters of heresie, excommunication, collation or deprivation of ministers, or ony sik-like essential censours, specially grounded and havand warrand of the Word of God. Item, Our Soveraine Lord, and Estaitis of Parliament foresaidis, abrogatis, cassis, and annullis the act of the same parliament, halden at Edinburgh the said year, 1584, granting commission to Bischoppes, and utheris judges constitute in ecclesiastical causes, to receive his Hienesse presentations to benefices, to give collation thereupon, and to put ordour in all causes ecclesiastical, quhilk his Majestie and Estaites foresaidis declaris to be expired in the selfe, and to be null in time cumming, and of nane availl, force, nor effect. And therefore ordainis all presentations to benefices to be direct to the particular Presbyteries in all time cumming, with full power to give collation thereupon, and to put ordour to all maters and causes ecclesiasticall within their boundes, according to the discipline of the Kirk; providing the foresaid Presbyteries be bound and astricted to receive and admitt quhatsumever qualified minister presented be his majestie or laic patrones."

No. III.

1592, c. 115. *Being the 2d Act of the 12th Parliament of James VI., holden at Edinburgh, June, 1592.*

Unqualified Persons being deprived, the Benefice vakis; and the Patron not presentand, the Right of Presentation perteinis to the Presbytery, but prejudice of the Tacks set be the person deprived.

"OUR Soveraine Lord, considering the great abuses quhilkis ar laitlie croppen in the Kirk, throw the mis-

behaviour of sik persones as ar provided to ecclesiastical functions, sik as parsonages and vicarages, within onie parochin, and thereafter neglecting their charge, ather leave their cure, or els committis sik crimes, faultes or enormities, that they are found worthie of the sentence of deprivation, ather before their awin Presbyterie, or else before the Synodall or General Assemblies ; quhilk sentence is the lesse regarded be them, because albeit they be deprived of their function and cure within the kirk, zit they think they may bruik lawfullie the profits and rentes of their saidis benefices induring their liferentes, notwithstanding the said sentence of deprivation : Therefore our Sovereine Lord, with advise of the Estaites of this present Parliament, declaris, that all and quhatsumever sentences of deprivation, ather pronounced alreadie, or that happens to be pronounced hereafter, be onie Presbyterie, Synodall or General Assemblies, against onie parson or vicar within their jurisdiction, provided sen his Hienesse coronation ; all parsones provided to parsonages and vicarages, quaha hes voit in Parliament, Secreitt Councell and Session, or provided thereto of auld, before the Kingis coronation, (and Maister George Young, Archdeane of Saint Andrew's being speciallie excepted), is and sall be repute in all judgments ane just cause to seclude the parson before provided, and then deprived, from all profits, commodities, rentes, and dewties of the said parsonage and vicarage, or benefice of cure, and that ather bee way of action, exception, or reply : And that the said sentence of deprivation sall bee ane sufficient cause to make the said benefice to vaik thereby. And the said sentence being extracted, presented to the patrone, the said patrone sall be bound to present ane qualified person of new to the kirk within the space of sex months thereafter : And gif he failzie to do the same, the said patrone sall tine the richt of presentation for that time allanerlie ; and the richt of presentation to be devolved in the hands of the Presbyterie within the quhilk the benefice lies, to the effect that they

may dispone the same, and give collation thereof to sik ane qualified person as they sall think expedient. Providing always, in case the Presbytery refusis to admitt onie qualified minister presented to them be the patrone, it sall be lauchfull to the patrone to reteine the haill frutes of the said benefice in his awin hands. And further, his Hienesse and Estaites foresaidis declairis, that the deprivation already pronounced, or to be pronounced, by onie Presbyterie, Synodall, or General Assemblies, against onie of the parsones or vicars foresaidis, sall na wayes hurt or be prejudicial to onie tackes lawfully set be that person deprived before his deprivation, to quhatsumever persones."

No. IV.

1690. c. 5. *Being the fifth Act in the second Session of the first Parliament of William and Mary, holden at Edinburgh, April 25, 1690.*

Act ratifying the Confession of Faith, and settling Presbyterian Church Government, June 7, 1690.

"OUR Sovereign Lord and Lady, the King and Queen's Majesties, and three Estates of Parliament, conceiving it to be their bound duty, after the great deliverance that God hath lately wrought for this church and kingdom, in the first place to settle and secure therein the true Protestant religion, according to the truth of God's word, as it hath of a long time been professed within this land; as also the government of Christ's church within this nation, agreeable to the word of God, and most conducive to the advancement of true piety and godliness, and the establishing of peace and tranquillity within this realm: and that by an article of the Claim of Right, it is declared, that Prelacy, and the superiority of any office

in the Church above Presbyters, is, and hath been a great and insupportable grievance and trouble to this nation, and contrary to the inclinations of the generality of the people ever since the Reformation, they having reformed from Popery by Presbyters, and therefore ought to be abolished: Likeas, by an act of the last session of this parliament, Prelacy is abolished: Therefore, their Majesties, with advice and consent of the saids three Estates, do hereby revive, ratifie, and perpetually confirm all laws, statutes, and acts of parliament, made against Popery and Papists, and for the maintenance and preservation of the true reformed Protestant religion, and for the true Church of Christ within this kingdom, in so far as they confirm the same, or are made in favours thereof. Likeas they, by these presents, ratifie and establish the Confession of Faith, now read in their presence, and voted and approven by them, as the public and avowed Confession of this Church, containing the sum and substance of the doctrine of the reformed Churches; (which Confession of Faith is subjoined to this present act). As also, they do establish, ratifie, and confirm the Presbyterian Church-government and discipline: That is to say, the government of the Church by Kirk-sessions, Presbyteries, Provincial Synods, and General Assemblies, ratified and established by the 114th act, Ja. 6, Parl. 12. anno 1592, entitled, Ratification of the Liberty of the True Kirk, &c. and thereafter received by the general consent of this nation, to be the only government of Christ's Church within this kingdom; reviving, renewing, and confirming the foresaid act of parliament, in the whole heads thereof, except that part of it relating to patronages, which is hereafter to be taken into consideration; and rescinding, annulling, and making void the acts of parliament following." Follow the titles and dates of divers acts of parliament. "With all other acts, laws, statutes, ordinances, and proclamations, and that in so far allenary as the saids acts and others generally and particularly above men-

tioned are contrary, or prejudicial to, inconsistent with, or derogatory from the Protestant religion, and Presbyterian government now established; and allowing and declaring, that the Church-government be established in the hands of, and exercised by these Presbyterian ministers who were outed since the 1st of January 1661, for non-conformity to Prelacy, or not complying with the courses of the times, and are now restored by the late act of parliament; and such ministers and elders only as they have admitted or received, or shall hereafter admit or receive: And also, that all the said Presbyterian ministers have, and shall have right to the maintenance, rights, and other privileges by law provided to the ministers of Christ's Church within this kingdom, as they are, or shall be legally admitted to particular churches. Likeas, in pursuance of the premisses, their Majesties do hereby appoint the first meeting of the General Assembly of this Church, as above established, to be at Edinburgh, the third Thursday of October next to come, in this instant year 1690. And because many conform ministers either have deserted, or were removed from preaching in their churches preceding the 13th day of April 1689, and others were deprived for not giving obedience to the act of the Estates made in the said 13th of April 1689, entitled, Proclamation against the owning of the late King James, and appointing public prayers for King William and Queen Mary:" Therefore their Majesties, with advice and consent foresaid, do hereby declare all the churches deserted, or from which the conform ministers were removed or deprived, as said is, to be vacant, and that the Presbyterian ministers exercising their ministry within any of these parishes, (or where the last incumbent is dead), by the desire or consent of the paroch, shall continue their possession, and have right to the benefices and stipends, according to their entry in the year 1689, and in time coming, ay and while the Church as now established take further course therewith. And to the effect the

disorders that have happened in this Church may be redressed, their Majesties, with advice and consent foresaid, do hereby allow the general meeting, and representatives of the foresaid Presbyterian ministers and elders, in whose hands the exercise of the Church-government is established, either by themselves, or by such ministers and elders as shall be appointed and authorised visitors by them, according to the custom and practice of Presbyterian government throughout the whole kingdom, and several parts thereof, to try and purge out all insufficient, negligent, scandalous, and erroneous ministers, by due course of ecclesiastical process and censures; and likewise for redressing all other Church disorders. And further, it is hereby provided, that whatsoever minister, being convened before the said general meeting, and representatives of the Presbyterian ministers and elders, or the visitors appointed by them, shall either prove contumacious in not appearing, or be found guilty, and shall be therefore censured, whether by suspension or deposition, they shall *ipso facto* be suspended from, or deprived of their stipends and benefices.

No. V.

Act 9th of the General Assembly 1697, commonly called the Barrier Act.

THE General Assembly taking into their consideration the overture and act, made in the last Assembly, concerning innovations; and having heard the report of the several commissioners from Presbyteries, to whom the consideration of the same was recommended, in order to its being more ripely advised and determined in this Assembly: and considering the frequent practice of former Assemblies of this church, and that it will mightily conduce to the exact obedience of the acts of Assemblies,

that General Assemblies be very deliberate in making of the same, and that the whole church have a previous knowledge thereof, and their opinion be had therein, and for preventing any sudden alteration or innovation, or other prejudice of the church, in either doctrine, or worship, or discipline, or government thereof, now happily established: Do therefore appoint, enact, and declare, That before any General Assembly of this church shall pass any acts which are to be binding rules and constitutions to the church, the same acts be first proposed as overtures to the Assembly, and being by them passed as such, be remitted to the consideration of the several Presbyteries of this church, and their opinions and consent reported by their commissioners to the next General Assembly following, who may then pass the same in acts, if the more general opinion of the church thus had agree thereto.

No. VI.

1707, c. 6. *Being the Sixth Act in the Fourth Session of the First Parliament of Queen Anne, holden at Edinburgh, October 3, 1706.*

Act for Securing the Protestant Religion and Presbyterian Church-government, January 16, 1707.

“OUR Sovereign Lady and the Estates of Parliament, considering, that by the late Act of Parliament for a Treaty with England, for an union of both Kingdoms, it is provided, that the Commissioners for that treaty should not treat of or concerning any alteration of the worship, discipline, and government of the Church of this Kingdom, as now by law established; which treaty being now reported to the Parliament, and it being reasonable and necessary, that the true Protes-

tant religion, as presently professed within this kingdom, with the worship, discipline, and government of this Church, should be effectually and unalterably secured: Therefore, her Majesty, with advice and consent of the said Estates of Parliament, doth hereby establish and confirm the said true Protestant Religion, and the Worship, Discipline, and Government of this Church, to continue without any alteration to the people of this land in all succeeding generations: And more especially, her Majesty, with advice and consent foresaid, ratifies, approves, and for ever confirms the fifth Act of the first Parliament of King William and Queen Mary, intituled, Act ratifying the Confession of Faith, and settling Presbyterian Church Government, with the haill other Acts of Parliament relating thereto, in prosecution of the declaration of the Estates of this kingdom, containing the Claim of Right, bearing date August 11, 1689: And her Majesty, with advice and consent foresaid, expressly provides and declares, that the foresaid true Protestant Religion, contained in the above-mentioned Confession of Faith, with the form and purity of worship presently in use within this Church, and its Presbyterian Church Government and Discipline, that is to say, the Government of the Church by Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies, all established by the foresaid Acts of Parliament, pursuant to the claim of right, shall remain and continue unalterable; and that the said Presbyterian Government shall be the only Government of the Church within the Kingdom of Scotland. And further, for the greater security of the foresaid Protestant Religion, and of the worship, discipline, and government of this Church, as above established, her Majesty, with advice and consent foresaid, statutes and ordains, that the Universities and Colleges of St. Andrew's, Glasgow, Aberdeen, and Edinburgh, as now established by law, shall continue within this kingdom for ever; and that, in all time coming, no Professors, Principals, Regents, Masters, or others bearing office in

any University, College, or School within this kingdom, be capable, or be admitted or allowed to continue in the exercise of their said functions, but such as shall own and acknowledge the civil government in manner prescribed or to be prescribed by the Acts of Parliament: As also, that before or at their admissions, they do and shall acknowledge and profess, and shall subscribe to the foresaid Confession of Faith, as the confession of their faith, and that they will practise and conform themselves to the worship presently in use in this Church, and submit themselves to the government and discipline thereof, and never endeavour, directly or indirectly, the prejudice and subversion of the same; and that before the respective Presbyteries of their bounds, by whatsoever gift, presentation, or provision, they may be thereto provided. And further, her Majesty, with advice foresaid, expressly declares and statutes, That none of the subjects of this kingdom shall be liable to, but all and every one of them for ever free of any oath, test, or subscription within this kingdom, contrary to, or inconsistent with the foresaid true Protestant religion, and Presbyterian Church government, worship, and discipline, as above established; and that the same, within the bounds of this Church and kingdom, shall never be imposed upon or required of them in any sort. And lastly, That, after the decease of her present Majesty, (whom God long preserve), the Sovereign succeeding to her in the Royal Government of the Kingdom of Great Britain, shall, in all time coming, at his or her accession to the Crown, swear and subscribe, that they shall inviolably maintain and preserve the foresaid settlement of the true Protestant religion, with the government, worship, discipline, rights, and privileges of this Church, as above established by the laws of this kingdom, in prosecution of the claim of right. And it is hereby statute and ordained, That this Act of Parliament, with the establishment therein contained, shall be held and observed in all time coming, as a fundamental and essential condition of any Treaty or

Union, to be concluded betwixt the two kingdoms, without any alteration thereof, or derogation thereto in any sort, for ever. As also, That this Act of Parliament and settlement therein contained, shall be insert, and repeated in any Act of Parliament that shall pass, for agreeing and concluding the foresaid Treaty or Union betwixt the two kingdoms; and that the same shall be therein expressly declared to be a fundamental and essential condition of the said Treaty or Union, in all time coming."

No. VII.

1707. c. 9. *being the Ninth Act in the Fourth Session of the First Parliament of Queen Ann, holden at Edinburgh, October 3. 1706.*

Act anent Plantation of Kirks and Valuation of Teinds, February 21, 1707.

"OUR SOVEREIGN Lady, and the Estates of Parliament, considering the great prejudice that does redound to this nation, through the want of an established and fixed Judicature, which may cognosce and determine in such causes and things, as by former Parliaments were referred to their Commission for Plantation of Kirks and Valuation of Teinds, and through the loss of the Registers of the Court, which were burnt in the fire that happened in this place: Therefore, her Majesty, and the said Estates, do hereby empower, authorise, and appoint the Lords of Council and Session, to judge, cognosce, and determine in all affairs and causes whatsoever, which, by the Laws and Acts of Parliament of this kingdom were formerly referred to, and did pertain to the jurisdiction and cognisance of the Commissioners formerly appointed for that effect, as fully and freely in all respects as the said Lords do or may do in other civil

causes : And particularly, but prejudice to the generality foresaid, to determine in all valuations and sales of teinds, to grant augmentation of ministers' stipends, prerogations of tacks of teinds, to disjoin too large paroches, to erect and build new churches, to annex and dismember churches as they shall think fit, conform to the rules laid down, and powers granted by Act 19th of the Parliament 1633, 23d and 30th Acts of the Parliament 1690, and the 24th Act of the Parliament 1693, in so far as the same stand unrepealed ; the transporting of kirks, disjoining of too large paroches, or erecting and building of new kirks, being always with the consent of the heritors of three parts of four at least of the valuation of the paroch whereof the kirk is craved to be transported, or the paroch to be disjoined, and new kirks to be erected and built, the minister in the mean time to serve the cure in the present kirk of the paroch : And for that effect appoints the said Lords to meet and sit each Wednesday in the afternoon during the time of session, and to call and discuss the said causes summarily, conform to a roll to be made up and kept of the same." Follows provision for supplying the lost registers ; appointment of macers to the commission. " Lastly, It is hereby declared, That this present Act and Commission shall be subject, nevertheless, to such regulations and alterations as shall be made by the Parliament of Great Britain."

No. VIII.

Act 1808, c. 138.

Act for defining and regulating the Powers of the Commission of Teinds, in augmenting and modifying the Stipends of the Clergy of Scotland.

WHEREAS by an Act of the Parliament of Scotland, in the year one thousand seven hundred and seven, in-

tituled, *Act anent Plantations of Kirks and Valuation of Teinds*, her Majesty Queen Anne and the Estates of Parliament empowered, authorised, and appointed the Lords of Council and Session to judge, cognosce, and determine in all affairs and causes which, by the laws and acts of the Parliament of Scotland, had been referred, and did pertain and belong to the jurisdiction and cognizance of Commissioners formerly appointed for that effect, as fully and freely in all respects as the said Lords did or might do in other civil causes; and certain powers therein mentioned were particularly granted by the said act; and it was thereby declared that the said act and commission should be subject nevertheless to such regulations and alterations as should be made by the Parliament of Great Britain: And whereas it is expedient, that the powers of the said Lords of Council and Session, as commissioners aforesaid, should, in some respects, be defined and regulated; may it therefore please your majesty that it may be enacted; and be it enacted by the King's most excellent majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that, from and after the passing of this act, it shall not be competent to the said Lords of Council and Session, as Commissioners aforesaid, except as after specified, to augment or modify any stipend which shall have been augmented or modified prior to the passing of this act, until the expiration of fifteen years from and after the date of the last final decreet of modification of such stipend.

II. And be it enacted, that no stipend which shall be augmented or modified by a decree after the passing of this act, shall be again augmented or modified until the expiration of twenty years from and after the date of such decree or modification thereof; nor shall any such stipend be augmented or modified at any future period until the expiration of twenty years from and

after the date of the last decree of modification thereof respectively.

III. Provided always, and be it enacted, that in all processes of augmentation or modification in which the days of compearance had elapsed, and which shall have been called in court prior to the twelfth day of March one thousand eight hundred and eight, and which shall continue to depend before the said Lords of Council and Session, as Commissioners aforesaid, at or after the passing of this act, it shall be competent to the pursuer either to suspend the same until fifteen years shall have elapsed from the date of the last preceding decree of modification, or to prosecute the same to a conclusion forthwith : and that it shall be competent to the said Lords of Council and Session, as Commissioners aforesaid, either to grant or to refuse to grant an augmentation in any such cases, or to pronounce or to refuse to pronounce a decret of modification therein : Provided always, that if the stipend in any such depending case shall be augmented or modified by a decret after the passing of this act, the same shall not be again augmented or modified until the expiration of twenty years from and after the date of such decree of modification thereof ; nor shall any such stipend be augmented or modified at any future period, until the expiration of twenty years from and after the date of the last decree of modification thereof respectively.

IV. Provided further, and be it enacted, that this act shall not be deemed or taken to extend to any case where a decret of modification having been pronounced by the said Lords of Council and Session, as Commissioners aforesaid, prior to the passing of this act, the subject matter whereof shall be depending, either upon petition to the said Commissioners, or upon appeal to the House of Lords at the time of the passing thereof, or where it may be competent to present such petition or such appeal against any such decret of modification, but every such case may be proceeded in and brought to a conclusion ; and a petition or petitions may be pre-

sented to the said Commissioners therein, or an appeal may be taken to the House of Lords as heretofore, and the same may be prosecuted with regard to said petition or appeal in the same manner as if this act had not been made.

V. Provided always, and be it enacted, that in such cases aforesaid, where there shall be a final decreet of modification, no such stipend shall be again augmented or modified until the expiration of fifteen years from and after the date of the final decreet of modification thereof, pronounced by the said Lords of Council and Session, as Commissioners aforesaid.

VI. Provided likewise, and be it enacted, that where such stipend shall, at or after the expiration of the said fifteen years, be again augmented or modified by a decree, after the passing of this act, it shall not be again augmented or modified until the expiration of twenty years from and after the date of such decree of modification thereof, nor shall any such stipend be augmented or modified at any future period, until the expiration of twenty years from and after the date of the last decree of modification thereof respectively.

VII. Provided further, and be it enacted, that in all cases whatsoever where an augmentation or modification of stipend shall have been or shall be applied for, and which shall be judged of, or a decision pronounced therein, after passing of this act, by the said Lords of Council and Session, as Commissioners aforesaid, it shall and may be competent to them to refuse to augment or modify any stipend in any such case, either on account of there being no legal fund of augmentation, or on account of the circumstances of the case; and it shall and may be competent for any party or parties to propound all relevant objections in every case whatsoever where an augmentation or modification shall be applied for, and which objections shall be determined by the said Lords of Council and Session, as Commissioners aforesaid, as heretofore.

VIII. And be it further enacted, that every stipend which shall be augmented after the passing of this act shall be wholly modified in grain or victual, even although part of the whole thereof shall have been previously modified in money, or although part of the whole of the teinds shall be money teind, unless where it shall appear necessary, on account of the state of the teinds, or on account of the interest of the benefice, or on account of the nature of the articles other than grain or victual which have been in use to be delivered in kind as stipend, that a part of the said stipend should be modified not in grain or victual but in money, or should be modified in such other articles as have been in use, to be delivered in kind as stipend.

IX. And be it further enacted, that in the case of every decree of modification which shall be pronounced after the passing of this act as aforesaid, it shall and may be competent to the said Lords of Council and Session, as Commissioners aforesaid, and they are hereby authorized and required to convert the said money stipend or money teind into grain or victual, save and except as aforesaid; and to make such conversion into grain or victual according to the fiar prices of the kind or description of grain or victual into which the same shall be converted, as appearing from the fiars of the county or stewartry struck for each year, in virtue of authority from the sheriff or steward in which the parish shall be situated, upon an average of such fiar prices for seven years preceding the date of the decret of modification, and exclusive of that year in which such decret of modification shall bear date.

X. Provided always, and be it enacted, that where such parish shall not be altogether situated in the same county or stewartry, or where no fiars applicable to the kind or description of grain modified shall be struck in the county or stewartry, wherein such parish is situated, it shall be competent for the said Lords of Council and Session, as Commissioners aforesaid, to convert the said

money into grain or victual, according to the average of the aforesaid seven years of the fiar prices of two or more of the adjoining counties, or of such stewartry, county, or counties, as they shall deem most suitable in the circumstances of the case.

XI. And be it further enacted, that it shall not be competent for the Lords of Council and Session, as Commissioners aforesaid, where a stipend shall, after the passing of this act, be modified in grain or victual, in whole or in part, to authorize the minister to receive the same or any part thereof in kind, but that it shall only be competent for them to decree the value thereof to be paid, or for him to receive the same in money, according to the fiar prices of the kind or description of grain or victual into which the same shall have been modified, as appearing from the annual fiars of the county or stewartry in which the parish, the stipend of which shall have been so modified, shall be situated, struck in virtue of authority from the sheriff or steward, for that crop or year for which such stipend, modified in grain or victual, shall be payable.

XII. Provided always, and be it enacted, that where any such parish shall not be altogether situated in one and the same county or stewartry, or where no annual fiars applicable to the kind or description of grain or victual modified, shall be struck in the county or stewartry wherein such parish is situated, it shall be competent for the said Lords of Council and Session, as Commissioners aforesaid, to fix upon and specify two or more of the adjoining counties, or such stewartry, county or counties, as they shall deem most suitable in the circumstances of the case, according to the annual fiar prices of which stewartry, county or counties, they shall decree the value thereof to be paid in money.

XIII. Provided always, and be it enacted, that where there shall have been or shall be different rates of annual fiar prices for any county or stewartry, district or place, struck in virtue of authority from the sheriff or steward,

the said conversion from money into grain or victual, and from grain or victual into money, in all of the cases aforesaid, shall be made according to the highest annual fair prices struck in virtue of authority from the sheriff or steward for the said county, stewardry, district, or place.

XIV. Provided always, and be it enacted, that the right of any heritor to surrender his valued teind in place of subjecting his lands, to the amount of the stipend localled upon them, shall not be taken away by what is herein enacted.

XV. And be it further enacted, that from and after the passing of this act, the said Lords of Council and Session, as Commissioners aforesaid, nine being a quorum, instead of meeting in the afternoon of each Wednesday as heretofore, shall meet at ten of the clock in the forenoon, upon the second Wednesday which shall happen after the Court of Session shall have met for the dispatch of business in the months of November and May in every year respectively ; and at the same hour, once a fortnight, on Wednesday, during the sitting of the Court of Session, and at such other times, and on such other days, in the months of December, January and March, not being any of the days upon which the Court of Session meet for the dispatch of the business of the said court, as the said Lords of Council and Session, as commissioners aforesaid, shall find necessary or proper for executing the powers committed to them by this and the said in part recited act.

XVI. And be it enacted, that it shall be lawful for the said Lords of Council and Session, as commissioners aforesaid, and they are hereby empowered and required to establish rules and regulations for abridging the forms and expense of citation of heritors and others, and for ascertaining the facts and circumstances of the case, and to establish regulations for executing the business committed to them by the said in part recited act of the Parliament of Scotland, and by the present act

with as much expedition and as little expense as possible.

XVII. And, in order to guard against collusion, and also in order that no processes of augmentation or for modification of stipends shall be raised on the ground of alleged collusion, be it further enacted, that every minister insisting in the process of augmentation shall, after the passing of this act, besides citing the heritors, also cite the moderator and clerk of the presbytery of the bounds, and furnish them with a statement of the amount of his present stipend, and the addition to the stipend which he means to crave, in order that the presbytery, if they shall judge it proper, may appear as parties to the process ; and, in the event of the presbytery entering no appearance, the minister shall forthwith transmit to the moderator or clerk of the presbytery a certified copy of the interlocutor pronounced by the court ; and it shall be competent to the presbytery, within five months after such interlocutor is pronounced, to enter an appearance, and to shew, if they shall see cause, that the decree of modification pronounced is collusive and prejudicial to the benefice : provided, that if the presbytery shall enter an appearance in such process, it shall be competent to the court to subject the minister insisting in such process, in the whole or any part of the expenses of process incurred by the presbytery.

XVIII. And be it further enacted, that all the powers given and granted by the said in part recited act to the commissioners thereby appointed, shall remain and continue in force, and receive such and the like effect as they do at present, excepting in so far as they are altered or repealed by this act.

No. IX.

Preamble and Abstract of Act 1810, c. 84.

WHEREAS by an act of the Parliament of Scotland, made in the year 1633, intituled, “ Anent the rate and price of Teinds,” and by another act of the Parliament of Scotland, made in the same year 1633, intituled, “ Commission for Valuation of Teinds not valued, rectifying the Valuations of the same already made, and other particulars therein contained,” it was statuted, ordained, and declared, that all heritors and liferenters of lands in Scotland should be entitled to have the teinds or tithes of their lands valued at certain fixed rates, to be paid for the same in all time to come: and whereas in many parishes in Scotland, where the stipends of the parochial ministers are payable out of the teinds or tithes, in consequence of the depreciation of the value of money, the stipends of such parochial ministers have become inadequate to their support and maintenance; and on account of the valuation of teinds which have taken place, no funds exist out of which future augmentations of such stipends can be granted: and whereas in several parishes, where the stipends of the parochial ministers are payable out of funds and revenues separate and distinct from the teinds, such stipends have also become inadequate to the support and maintenance of the ministers thereof, and no funds exist out of which such stipends can be augmented: and whereas it is expedient that means should be provided for augmenting the stipends of each of such ministers as aforesaid to a yearly amount or value of one hundred and fifty pounds sterling, and it appears that an annual sum, not exceeding ten thousand pounds sterling, will be sufficient to carry these purposes into effect:—May it therefore please your Majesty, that it may be enacted, &c. &c., that from and after the passing of this act, there shall in every

year be set apart and appropriated in the hands of his Majesty's Receiver-General and Paymaster in Scotland, out of the public revenues and money received and collected by him, an annual sum, not exceeding in the whole the sum of ten thousand pounds of lawful money of Great Britain, to answer the purposes of this act, to be applied in manner herein after mentioned.

The act directs, that as soon as conveniently may be, there shall be made up, from the accounts sent by different presbyteries, under the authority of the Lords of Council and Session, a list of all the stipends which do not extend in their yearly value to the sum of L.150 Sterling, and which cannot be augmented to that extent under the laws at present in force, and of the sums necessary to augment each such stipend, including its present annual value, to the annual amount of L.150 Sterling, provided that the said augmentation shall not exceed in the whole the sum of L.10,000 Sterling. That the Lords of Council and Session, having heard every minister who thinks himself aggrieved by this list, and having adjusted and settled the same, as to them shall seem just and expedient, shall order it to be recorded in their books, and shall send a certified copy thereof to the Barons of his Majesty's Exchequer in Scotland, who shall appoint it to be forthwith recorded in their books, and shall thereupon issue a precept or warrant addressed to his Majesty's Receiver-General and Paymaster in Scotland, to each of the ministers of the respective parishes mentioned in the list, for payment to such minister of the annual sum that, according to such list, is necessary to augment his stipend to the annual value of L.150 Sterling. That the augmentations by this act granted shall be payable by two half-yearly payments, at the terms of Whitsunday and Michaelmas in each year, and the first half-yearly payment thereof shall be due and payable for the half year immediately preceding the term of Whitsunday last. That the rights and interests of the respective ministers who may be entitled

to the augmentation to be granted under the authority of this act, shall, in case of their decease or removal, cease and determine at the same terms of Whitsunday or Michaelmas, and in the same manner, as the right and interests of the clergy of Scotland in their other stipends cease and determine by the law of Scotland; and that the rights and interests of their successors to the said augmentation shall commence at the terms of Whitsunday or Michaelmas immediately preceding their admission to their respective churches or parishes, in the same manner as the rights and interests of the clergy of Scotland in their other stipends do commence by the law of Scotland.

No. X.

1672. c. 13. *Being the Thirteenth Act in the Third Session of the Second Parliament of Charles II., holden at Edinburgh, June 12, 1672.*

Act for the Ann, due to the Executors of Bishops and Ministers.

“THE King’s Majesty, judging it necessary for the good of the church, that such a stated and equal course be taken for clearing and securing the ann due to the executors of deceased bishops, beneficed persons, and stipendiary ministers, as may be suitable to the interest of the executors, and no discouragement or hinderance to the planting of the vacant benefices, doth therefore, with advice and consent of his Estates of Parliament, statute and ordain, that in all such cases hereafter, the ann shall be an half year’s rent of the benefice or stipend, over and above what is due to the defunct for his incumbency, which is now settled to be thus, viz. If the incumbent survive Whitsunday, there shall belong to them

for their incumbency the half of that year's stipend or benefice, and for the ann the other half; and if the incumbent survive Michaelmas, he shall have right to that whole year's rent for his incumbency, and for his ann shall have the half year's rent of the following year: and that the executors shall have right hereto, without necessity or expenses of confirmation.

No. XI.

Act against Simoniacal Practices.

Edinburgh, May 30, 1759. Sess. 5.

THE General Assembly, taking into consideration a representation of the Synod of Angus and Mearns, relating to bargains betwixt patrons or heritors in parishes, and candidates for the ministry, or the friends of such candidates, and the great danger which may thence arise to this church, do hereby enjoin the several presbyteries in this church, in order to prevent such practices for the future, to take all proper measures to discover if any such have happened in their bounds; and if, upon inquiry, it shall be found, that any minister or probationer hath obliged himself, or that his friends, before his settlement, and in order to procure the same, have obliged themselves, upon the account of the candidate, that he shall not, during his incumbency, commence any process against the heritors for augmentation of stipend, reparation of manse, office-houses, or enlarging his glebe, or shall have become bound in any sum or sums of money, or any prestation, to the patron or person connected with the patron, in order to procure the presentation, or to the heritors or others concerned, in order to obtain a concurrence with the said presentation, or otherwise to procure a call to a vacant parish, or has entered into any

Simoniacal paction or practice for that effect: that such presbytery lay a representation of the said matter before the General Assembly, that the Procurator for the Church may have orders to raise and carry on a process of reduction of such bargains or obligations before the Court of Session: and also the General Assembly do hereby declare it a just cause of deposition in ministers, and of taking away the licence of a probationer; and ordain presbyteries to proceed to such sentences against all such ministers and probationers, as shall be hereafter found to have either entered into such bargains themselves previous to their settlements, or who shall after their settlements homologate the deed of their friends. And it is hereby enacted, that if any such Simoniacal practices as are mentioned and described in this act shall be carried on by any person or persons whatever, in order to the promoting or procuring any benefice or office in this church to any minister or probationer, though without his consent or approbation; and if such minister or probationer shall, at any time, be told or informed that such practices have been, or are carried on, or proposed to be carried on for the purpose aforesaid, and shall not make discovery or intimation thereof to the presbytery of the bounds at their first meeting after he shall receive such information, then, and in that case, he shall, if a minister, be deposed, and, if a probationer, be deprived of his license. And further, the Assembly appoint this act to be read by all presbyteries to every person before he be licensed to preach the gospel, and to every candidate for a settlement in their bounds, before they take any steps towards his settlement.

No. XII.

Note respecting the maintenance of the Poor in Scotland.

THE maintenance of the poor is a burden for which the law of Scotland makes provision, by committing to the heritors and kirk-session of the parish the power of laying on an assessment for that purpose ; it constitutes them the legal trustees for application of the sum assessed ; and it places all the funds, whether in land or money, which are vested in the kirk-session for behoof of the poor, under the control of the heritors, who have a right to be present at the distribution of them, and without whose consent no part of those funds can be alienated, or removed from one kind of security to another.

But, in most parts of Scotland, a regular assessment for the poor is unknown ; and, except in large towns, the permanent funds, aided by the voluntary collections on the Lord's day, are generally sufficient, not for inviting persons to come upon the poor's roll, or for superseding the assistance which ought to be given by the relations of the distressed, but for preserving the poor from the extremity of want.

It ought, however, to be understood by all concerned, that the effectual and frugal method of providing for the poor, which is peculiar to this part of the united kingdom, is not imposed by any legal obligation, but is the fulfilment of a labour of love, in which all are called to take a part. Upon the first day of the week, a collection for the saints, according to the spirit of the direction of the apostle, (1st Cor. xvi. 1, 2,) is conjoined with public worship ; and the people give willingly, every one as God hath prospered him. The minister is not bound by his ordination vows, by the laws of the church, or the laws of the land, to act as an administrator of the

funds belonging to the poor in his parish, and he may meet with a degree of persecution in this business so vexatious, as to justify him in self-defence, after giving an account of his former management, to resolve to discontinue it. But such cases rarely occur. By his stated visitation of the parish, he is acquainted with the situation of the aged and infirm, which often continues for years with little variation. By the reports of the elders from the different districts of the parish, he is informed of occasional distress. By the assistance of the elders voluntarily undertaking the office of deacons, he ensures a judicious and humane application of the weekly distributions; and by appealing, when needful, to the generosity of those who are willing to communicate, he is commonly able to provide a supply for the extraordinary demands which arise from an unusual measure of sickness, or from the pressure of hard times.

The several parts of this ultroneous labour are rendered easy, pleasant, and creditable, by that cordial co-operation of all ranks which disposes the disciples of Christ by love to serve one another; they become irksome when the great body of the people, for whose sake they are undertaken, from unreasonable prejudices against the establishment, join some of the forms of secession in this country, and, leaving their poor to the care of the establishment, contribute all they can spare to the maintenance of their teachers; and they become unavailing, when, instead of the rich and poor meeting together for Christian worship, the wealthier inhabitants of the parish withdraw the benefit of their example from those places where it might be of most use to the public; and by withdrawing also their weekly collection, hasten the necessity of those assessments for the poor which the experience, and the complaints of our sister kingdom, might teach us to regard as a formidable evil.

NOTES

BY THE EDITOR.

NOTE A, p. 16.

By the repeal of the Test Act in 1828, and by the Catholic Relief Bill in 1829, penalties for non-conformity to the Church of England have been abrogated, and the most important civil offices, with very few exceptions, are now open even to the Catholics of Great Britain and Ireland.

NOTE B, p. 44.

VERY considerable obloquy has been thrown upon the author in consequence of his manner of describing "a call." Again and again this has been adverted to in recent debates, and the obnoxious expression has been quoted, often with significant tones, as marking his almost open contempt of the thing which he thus characterized. All this is natural and allowable, considering the warmth with which these debates were conducted, and the effect which allusions of this kind might be expected to produce upon a mixed or popular meeting. But it was scarcely to be looked for that in a grave inquiry into patronage, which was ordered by the Commons House of Parliament, such a question as the following would occur; "Are you aware of any distinguished person of the church having denominated the call, 'a paper named a call'?" The question has the

appearance of being put for the purpose of shewing that the language of the "distinguished person" referred to was highly disrespectful and contemptuous towards "the call." The honourable member by whom the question was proposed, had very probably heard that the language which he quotes had been used. He can scarcely have read the work in which it occurs with the attention to which it is entitled. He would otherwise have found that the mode of expression, so offensive to him, is not used peculiarly in regard to "a call," that it is in fact the common mode of description employed, and that, unless the author can be charged with a design to hold up to ridicule and scorn some of the most solemn forms of procedure in the Church of Scotland, he must, in fairness, be acquitted of all sinister intention in what he says of "a call." Thus, in explaining the steps to be taken for the induction of a minister, p. 45, or for the ordination of elders, p. 48, he speaks of "a paper read from the pulpit called an edict." The expression may be unhappily chosen; but, independently of the evidence which these other passages bear that it was used *bonâ fide*, or without any disparaging purpose, those who knew the author must be aware that it was foreign to his mind to treat disrespectfully, by either action or word, any thing with which the church was connected. His regard for the church, and his habits as a churchman, forbade it. His whole character stood opposed to it. Insinuations of every kind he disliked, and discountenanced in others. What he reprobated in them, he would have disdained to practise himself. His opinion upon any subject he stated openly and plainly, with the gentleness which was familiar to him, but without circumlocution or evasion, or any underhand process. His views of "a call" he did not conceal. In his place in the General Assembly he often explained them. In itself, therefore, it would have been a work of supererogation, uncongenial to his character, and most unseemly in a plain, didactic production, designed to make

such as choose to examine it acquainted with the constitution of our church, to have employed, on any one of the subjects of which he treated, a form of expression which was meant, in a covert or insidious manner, to convey that in the opinion of the author the subject was trifling or contemptible.

Whether his views of "a call" would have admitted of any modification whatever ; whether he would have been disposed to give greater latitude in objecting to a presentee than the church-courts of his days were willing to allow, it is impossible to say. But if an opinion may be hazarded, it may be presumed, from the closing act of his public life, that he would not have been backward to concede all that could be expected from him consistently with his principles. At the bar of the General Assembly he appeared in support of both the settlements at Kingsbarns and Kilconquhar ; because in his estimation the presentees to these parishes were qualified persons, and there was no law to prevent them, although they were professors at St. Andrews, from holding a parochial charge at a distance from it. But when he found that the feeling throughout the church was strongly against such appointments, he was himself the framer of an overture, which was subsequently converted into a law, that, as it is essential for every minister of the Church of Scotland to reside in his parish, it shall not be competent for a professor in any university to hold a parochial charge, which is not situated within the city which is the seat of that university. This closing act of his public life does not indicate an unwillingness to yield where it was possible for him to do so.

But whatever might have been the case respecting him, there is nothing to prevent those who adhere to his principles from following a course, which, in the present circumstances of the church, it is not improbable that he would have pursued. A sacrifice of their principles is not to be looked for or asked. And to the

recent enactment of the General Assembly respecting calls, if it shall retain what they account its objectionable form, it may be impossible to reconcile them. While the law of patronage remains, patrons have a right to insist that their presentees shall not be set aside without a judgment on their qualifications being pronounced ; and this right the General Assembly, even were it fortified by the consent of presbyteries, has no power to abridge or revoke. Had the law been altered by the State to the effect that patrons and parishioners should communicate together, before a presentation is issued, and that along with every presentation there should be laid on the table of the presbytery satisfactory information that a majority of heritors and elders, or of heads of families in communion with the church, did not dissent from the appointment, the expediency of the alteration might have been questioned, but the power to effect it would not have been doubted. The church would have had to acquiesce, and would still have had its peculiar duties to perform. But here is the church stepping beyond its own province, and legislating where, as the law now stands, it has no title to interfere. Its legislation too is considered not only as an invasion of the rights of patrons, but as an invasion also of the rights of its own judicatories. It belongs to presbyteries to judge of the qualifications of presentees. But this judgment is transferred in the first place to the people, and presbyteries are reduced to this degrading condition, that, without inquiry being made, or reason being assigned, or any other exercise of mind being allowed, but what consists in reckoning the number of those who dissent, they may have to reject a presentee, although in their conscience they may at the same time believe not only that he is a worthy person, but also that he is likely to be useful and successful as a minister of Christ. In these circumstances the objections to the recent enactment of the General Assembly may appear insurmountable. If the powers of the church-courts were, on the one

hand, not to be so stretched as to interfere with the law of the land, and consequently, when exercised, to be either nugatory or to produce a collision between the civil and ecclesiastical judicatories ; and on the other hand, not to be so curtailed, as in a very important respect to be virtually annulled, there should be no hesitation in giving every facility to the people for making their sentiments known in a matter of so much interest to them as the appointment of a pastor. It is agreed on all hands that they have a voice in the appointment. The difference of opinion respects the extent to which their voice should reach. Let the advocates on either side weigh calmly and dispassionately the sentiments and views of those who oppose them. Let victory be less their object than the adoption of measures in which all may concur, and by which the stability and peace of our Zion may be secured. In this spirit there will be little danger either that what is really for the good of the church will be overlooked, or that, in any case, matters will be pushed to such extremity as to cause discontent and division among those who ought, in times like the present, to be cordially and closely united. The one party will not blindly adhere to modes of proceeding, which a liberal interpretation of the laws admits of being altered ; and the other party will be unwilling, by the precipitancy of their counsels, to alienate their brethren, or fill them with alarm, or throw any impediment in the way of their hearty co-operation in whatever may conduce to the welfare and extension of the church.

Note C, p. 50.

At present there are eighty presbyteries in the Church of Scotland. The two new ones are the presbyteries of Burra-voe and of Greenock. By the admission of ministers of chapels of ease to a seat in presbyteries, one or

more of these judicatories now consist of above thirty-six members ; and it will consequently be matter for consideration, whether a new act should not be passed, similar to Act 6, of Assembly 1712, so as to carry on the proportion between the representation of presbyteries in the General Assembly, and the number of parishes in each presbytery.

Note D, p. 50.

THERE are now sixteen provincial synods in the church, the presbyteries of Lerwick and Burravoe having been constituted into the synod of Shetland by an Act of Assembly, 1830.

Note E, p. 53.

THE churches in India have the privilege of sending two representatives to the Assembly. And there are additional members from the lately erected presbyteries. The result of introducing the ministers of chapels of ease is not yet known. But, exclusive of them, the number of members in the General Assembly is 369.

Note F, p. 55.

FOR several years after the author's time the Assembly-house continued to be an aisle of the High Church ; and small as the place was, it was not very often that all its benches were occupied. It had the advantage too of bringing the members compactly together, and of enabling almost any speaker to be distinctly heard in all its corners. On particular days, however, when questions of public interest were discussed, it was excessively crowded, and much inconvenience and interruption to business were experienced. It became consequently a

desirable object that the Assembly should be relieved from such annoyances. In the recent changes upon the fabric of St. Giles' church, which have swept away the ancient aisle, it was designed that a part of the building should be appropriated to the General Assembly; but, unhappily, the place, after being fitted up at considerable expense, was almost immediately abandoned. At present, therefore, there is no Assembly-house. The meetings of the supreme ecclesiastical court have, for some years past, been held in churches, which are by no means well-adapted for them.

It is satisfactory to think that, notwithstanding the failure which has occurred in St. Giles's, hopes are held out that suitable accommodation will be provided for the General Assembly; and it is much to be desired that these hopes may be speedily realized.

NOTE G, p. 56.

THE Committee of Bills, and the Committee of Overtures are now appointed at the first sederunt of the Assembly, and meet so as to give in their reports on the following day, Friday, when there is, as usual, a diet for prayer; and after it is over, there is a second session for the arrangement and dispatch of business.

NOTE H, p. 62.

DOUBTS have arisen of late with regard to the effect of a dissent and complaint, whether it goes the length of sisting procedure. An overture for inquiry into the subject was brought to the Assembly 1831, and a committee was in consequence appointed to investigate it. There is no record of the labours of that committee, as its report was made verbally. The subject was after-

wards recommended to the attention of the Committee on the Form of Process.

The precedents for fifty years back are, with one exception, in favour of the doctrine laid down in the text, that a complaint has the effect of sisting procedure, and may obtain the reversal of a sentence pronounced in an inferior court.

According to that doctrine, a very considerable power is conferred on the minority of a court. It is a power which it is not usual for a minority to enjoy; and which may be abused by being employed on frivolous occasions or for vexatious purposes. But the check which is thus given to a minority over the conduct of their brethren is a valuable part of our ecclesiastical constitution. It imposes a necessity for having the most common and trivial matters ordered according to law; and it shews the church to be anxious that all its proceedings should be rightly conducted, and that the inferior courts should be guarded in every possible way against the neglect or the improper discharge of their duties.

In the case of a complaint, which should be made only when the judgment of an inferior court appears to be at variance with the law or the constitution of the church, there is even stronger reason that procedure should be sisted, than when a private party thinks himself aggrieved, and enters an appeal. For in the former case it is the *majus bonum ecclesiæ* that is concerned. Were the effect of a complaint merely to bring the judgment complained of under the review of a superior court, and were procedure to continue notwithstanding a complaint, the right to complain would often be of little avail. Ultimately indeed there might still be a reversal of the sentence complained of. But it is possible also that the very evil, which it was the object of the complaint to prevent, might be carried into effect before the superior court had an opportunity of meeting, or that matters might get into such a state, from the

additional steps that were taken, and the new interests that had become involved, and the more complicated difficulties that had arisen, that, supposing an injury to have been sustained, the superior court would have a very painful and embarrassing, if not an impracticable, duty to perform in redressing it.

Inconvenience will doubtless be felt from complaints having the effect of sisting procedure. Delays may be occasioned in the adjustment of matters, which it would be desirable to settle with all expedition. But evils of this kind it is difficult to avoid under any system whatever. And surely it is better that there should be temporary inconvenience, and even partial suffering to individuals, than that from the ascendancy of party, or from favour for particular measures or particular persons, the character of the church-courts should be lowered, and their proceedings should become irregular and confused.

Complaints, it is true, may be frivolous or vexatious. But, even so, there does not appear to be great danger to the general interest of the church from their having the power of sisting procedure. The history of the past does not warrant any apprehension of the kind. It cannot be agreeable to members of an inferior court to appear publicly as complainers of the conduct of their brethren, men in whose society they live, whose characters are known and respected, and whom many will be disposed to think as likely as they are to be versant in the law and the constitution of the church. Every complaint besides must have ground shewn for it in the higher court to which it is carried; and if there it should be found that the complaint has originated from any cause, save from a conviction that the proceeding complained of was wrong in itself, there can be little doubt of such dissatisfaction or such censure being expressed, as will constitute a warning for the future, not only to the individual complainers, but also to others, against following a similar course.

NOTE I, p. 65.

SEVERAL overtures for amending the Form of Process were sent to the General Assembly in 1814. The deliverance upon them was simply a recommendation to those who transmitted them to consider the sketch of a new Form of Process, which was drawn up by the Procurator in 1786.

The subject was again taken up a few years ago, with the design of altering the Form of Process, in so far as it relates to charges against ministers. But the attempt was almost as unsuccessful as that which is mentioned in the text. With the exception of a change which makes it competent for an inferior court, notwithstanding any appeals, to continue procedure till it finds a libel relevant, the mind of the church seemed to be decidedly adverse to the proposed alterations. The Committee on the Form of Process is annually renewed by the Assembly. But its attention has latterly been confined to arrangements for the conduct of business in the House.

The attempts to improve or amend the Form of Process have probably failed, because the alteration which they sought to effect was so great as to give alarm to the church. It is not surprising that the recent attempt was little encouraged, when it is considered that a principal part of the projected plan was to deprive presbyteries of their judicial power, and persons accused of their right of appeal, beyond an appeal on the relevancy of a libel. The objects contemplated in this plan were, first, to relieve presbyteries from the very awkward situation in which they are liable to be placed, when they feel themselves necessitated, for their own vindication, to serve a minister with a libel, and, secondly, to prevent the delay, which, in cases of libel, is too apt to arise.

It is obviously an unbecoming and a most undesirable

situation when a presbytery is compelled to act both as accuser and as judge ; and none will be more anxious for such an alteration of the law as may prevent its ever occurring, than those who have had occasion to fill it. But is it necessary, for the purpose of extricating presbyteries from this situation, to deprive them of their prerogative of judging, and to constitute them merely accusers of the brethren ? It would not be for the respectability or the usefulness of the inferior courts to do so. Nothing is more clear than that Presbyteries are the inspectors and guardians of the office-bearers, as well as of the people, within their bounds. It belongs to them to inquire into their conduct, and, according to the observations which they make, to employ proper means for checking or removing what is wrong. To prevent them from exercising this power, and to prevent them in the most important use of it, would be to sink the character of presbyteries, and through them to wound or weaken the church. Besides, to make them only accusers, and to take from them the right of dealing with a case of libel, would be to put it out of their power to perform one of their most important duties. Every church-court is essentially a court of conscience. The presbytery is particularly so. Its object, in all parts of its proceeding against any individual, is to bring him to a sense of his guilt, and to encourage and engage him to repentance. But how can this be effected, if the only character in which the presbytery appears is that of a party in the case ? To transfer the power of judging from presbyteries, either to the Assembly, or to any committee or court which the Assembly might appoint, would, moreover, be to go directly in the face of another fundamental principle of our ecclesiastical constitution, viz. that which requires the gradation of courts to be observed.

It is not then by such a plan as was lately proposed that the evils or defects of our judicial code can be removed. Some of them are inherent in our system as a

church, and will never be entirely eradicated from it. And, happily, after all, they are not very formidable. The church has existed and flourished in despite of them ; is regarded with affectionate reverence still, and, under God, has been the instrument of good. To preserve her constitution is our first object. Our next is to effect such improvements on her mode of procedure, or on the administration of her laws, as may be safely and consistently made.

The following hints are submitted with much deference, in order to induce a calm consideration of the subject.

To relieve presbyteries from the anomalous and distressing situation of being at the same time accusers and judges, might not something be done to divest them, in part at least, of the first of these characters? To divest them of it entirely seems impossible. Their episcopal function makes it essential for them to attend to the conduct of every one of their members, and to institute inquiries and proceedings wherever there appears to be cause for them. In the event, therefore, of a *fama* against a minister, it must always belong to them to make themselves acquainted with its rise and broachers ; and having satisfied themselves that there is ground for a *fama*, it must be for them also, if no private party comes forward with a libel, to say that the minister should be put upon his trial. Thus far the Form of Process should be strictly adhered to. But, from this point, might not farther procedure in the presbytery, might not the prosecution, in short, be carried on by the church collectively, without any violation of the fundamental principles of our constitution, and with very considerable advantage to all concerned,—not only to the presbytery, but also to the party at the bar, who labours at present under this serious evil, that when the presbytery are his libellers, he has to plead his cause without being exactly aware of the ground that is to be taken against him, or rather of the manner in which the

ground is to be occupied? The church has a law-officer, to whom the office of public prosecutor might be assigned, and who, on information being given to him that a presbytery had deemed it necessary that a libel should be served on a particular minister, might take his own precognition for the purpose.

The opinion of the procurator as to the necessity for a libel might not coincide with that of the presbytery. But whether this was the case or not, it would only be due to the person accused, that he should have an opportunity of rebutting the charges against him, and that, if the presbytery had acted on erroneous or insufficient information, his character should be vindicated in the most solemn and decisive manner.

The change upon the situation of a presbytery, by committing the prosecution of a libel to the procurator, would not by any means be a complete one. Their previous inquiry may, doubtless, give a bias to their minds; and the very suspicion of this being the case, would make it peculiarly imperative on them to be guided solely by the evidence to be led before them. But their situation, it is plain, would be infinitely preferable to what it is at present. They would have but one character to sustain. Instead of labouring first to make out a case, and then endeavouring to ascertain whether they had succeeded in doing so, their only concern would be to act as upright and conscientious judges. They would not be committed as parties. The libel would not be theirs. It would not lie at their door to substantiate and prove it.

The framing of a libel is a business which probably no presbytery performs without legal assistance. The sooner, therefore, that it is put altogether into the hands of a professional man, the better. And what professional man but the procurator can the church employ?

It is not a very onerous duty which would thus be imposed on him. Libels against ministers are really of rare occurrence. It is grievous to think that they

should ever be necessary. The very idea of a minister, who ought to be the instructor and the pattern of believers, being accused of scandalous sins, is so painful, that a case of the kind takes up a great deal of the public attention, and is not speedily forgotten. It is looked at, as it were, through a magnifying glass, and under the impression of its horrors, there is perhaps a more unfavourable opinion entertained of the ministers of our church as a body, than is warranted by facts. During the procuratorship of Sir John Connell, which lasted twenty-four years, there were only eight cases of libel, perhaps it should be said, only seven. They came indeed repeatedly before the Assembly upon different points, which were the subjects of appeal; and there were consequently, during the time that has been mentioned, sixteen or seventeen questions connected with libels. But of the seven or eight original libels, out of which these questions arose, two were brought before the presbytery by private parties, so that, in these, the presbytery had no other character to sustain but that of judges; and one, which occupied the Assembly for five successive years, after having been begun by the presbytery, was withdrawn, and was served anew at the instance of parishioners. If we may judge, therefore, by the period alluded to, the labour which would be devolved on the procurator by assigning to him the conduct of cases of libel commenced by a presbytery, would be light indeed. It would be only, of course, while these cases were before the presbytery, that he would need to appear; and there does not seem to be any reason why he should not act by deputy, if other avocations do not admit of his leaving Edinburgh at the precise time when his presence would be required.

The delay incident to cases of libel is a great evil in the administration of our judicial code. One case has been already mentioned as having engaged the attention of the Assembly for five years. A more recent one occupied the church-courts for a still longer time. If

the gradation of courts is to be observed, some delay in disposing of cases of libel is unavoidable. The liberty of appeal is so great, and that liberty is so skilfully used by members of the legal profession, that they can scarcely fail to be protracted. Objections may be taken to the admissibility of witnesses, or to questions proposed; and it may depend on particular witnesses being examined, and particular questions being asked whether additional witnesses shall be called, or additional questions shall be put. It is thus in the power of the person libelled to cause very considerable delay by successive appeals; and it is quite obvious that, in some instances, his case might be materially prejudiced, or the opinion of his judges be biassed, were his appeals to be disregarded, and evidence, which it is possible that the superior court might pronounce to have been inadmissible, to be heard. Delay is thus interwoven with our judicial system. But still means may be found for preventing it from being excessive.

The General Assembly is in the practice of ordering the inferior courts to proceed in the face of appeals, so as to finish the investigation of a case, but to sist pronouncing a final judgment till the appeals be disposed of. This is a strong measure. If it were to be adopted as an invariable rule of proceeding, it would take the power of judging finally of a case out of the hands of the inferior court, and it might at times bear hard, as has been stated, upon the person libelled. But circumstanced as the church is, it is a measure which may occasionally be resorted to with advantage, and which, if not indiscriminately employed, will be admitted by presbyteries themselves to be wise and beneficial.

Some use might be made of the meetings of the commission to prevent appeals upon points of evidence from protracting a case to a very long period. Thus, when the Assembly has found a libel relevant, its deliverance might bear that the commission is empowered to receive appeals upon such points, whether in regard to the

admissibility of witnesses, or in regard to particular questions ; and that such appeals, when taken in presbyteries in June or July, shall be made to the meeting of the Commission in August ; and when taken in the autumn synods, or in presbyteries subsequent to these synods, shall be made to its meeting in March. There would thus be considerable progress, even in a single year, towards finishing the evidence, by the presbytery entering upon it in summer, so as to give an opportunity for appeal to the Commission, and resuming it in autumn before the meeting of synod ; and, in the event of no appeal to it, carrying on the investigation between that time and March. There would still be another meeting of presbytery, after the Commission in March, when the investigation might be renewed ; and if the case were again carried to the Assembly, the supreme court would be able to judge, from the nature of the previous appeals, whether the strong measure already adverted to should be employed, so as, by the end of another year, to have the whole case ready for a final judgment.

NOTE K, p. 66.

FROM the change in the number of the inferior courts, it is now requisite, in order that any overture may be passed into a standing law, that it should be approved of by more than forty presbyteries.

NOTE L, p. 98.

IT was certainly the intention of the Act 1810, that no stipend in the established church should be under £150. But, notwithstanding, there is probably not one of the small livings which amounts to that sum. The decrease in the price of grain, since the annual value of these

livings was estimated, is very considerable ; so that the sum, which in 1810 was sufficient to augment each of them to £150, (and it is the only sum which can be drawn for them from the Exchequer,) does not now answer the purpose. The attention both of the church and of the government has for some years been drawn to this subject. It is only an act of justice that the stipends, which it was intended to increase to £150, should not be allowed to sink below that sum. But is there not reason that they should be augmented to a larger amount ? It is hard upon those who hold them, that the incomes of their brethren should from time to time be increased, and theirs should not only be stationary, but be far below the ordinary stipends of the church. It is ungenerous to exact of them the important duties, which the ministers of religion are called to perform, and to make their remuneration so scanty, as not to relieve them from much anxiety about their worldly affairs, and scarcely to enable them, when they have families, to educate their children, and to maintain a respectable appearance. If it is good service which the Church of Scotland renders to the state, if that church deserves to be upheld in practical vigour, can it be wise policy to let any of its ministers sink so low, on account of pecuniary circumstances, as to be objects of commiseration to many of their people, and to be merely tolerated by the great ?

THE END.

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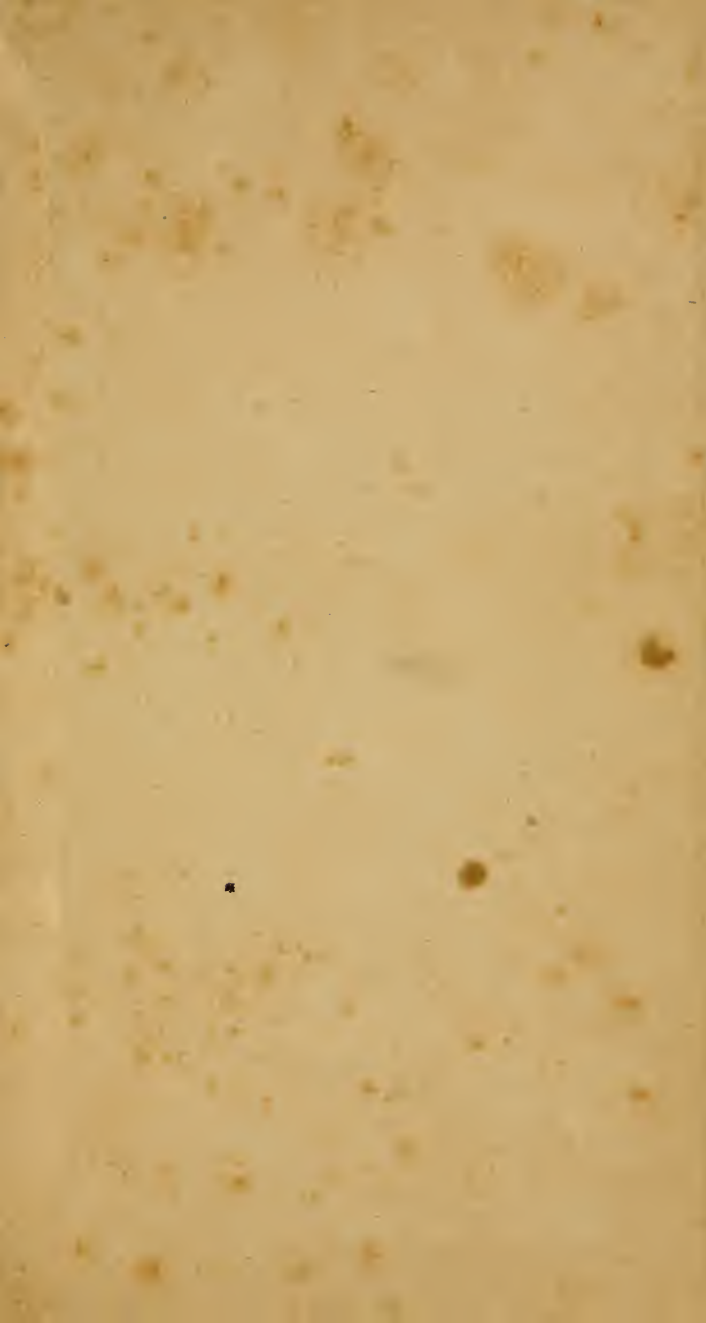
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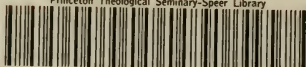








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